

EXHIBIT P

Hearing

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343(JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Thursday, August 16, 2007, beginning at approximately 3:35 p.m., there being present:

BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
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Hearing

2 (Pages 2 to 5)

Page 2	Page 4
<p>1 APPEARANCES (Continued);</p> <p>2 MCKENNA, LONG & ALDRIDGE, LLP</p> <p>3 CASS W. CHRISTENSON, ESQ</p> <p>4 REL S. AMBROZY, ESQ</p> <p>5 1900 K Street, N.W.</p> <p>6 Washington, D.C. 20006</p> <p>7 for Plaintiffs</p> <p>8 RICHARDS LAYTON & FINGER</p> <p>9 ANNE SHEA GAZA, ESQ</p> <p>10 One Rodney Square</p> <p>11 Wilmington, Delaware 19801</p> <p>12 for Defendant Tatung Co</p> <p>13 GREENBERG TRAURIG LLP</p> <p>14 FRANK MERIDETH, ESQ</p> <p>15 VALERIE HO, ESQ</p> <p>16 2450 Colorado Avenue, Suite 400E</p> <p>17 Santa Monica, California 90404</p> <p>18 for Defendant Tatung Company of America, Inc</p> <p>19</p> <p>20 CONNOLLY BOVE LODGE & HUTZ LLP</p> <p>21 JAMES D. HEISMAN, ESQ</p> <p>22 1007 North Orange Street</p> <p>23 Wilmington, Delaware 19899</p> <p>24 for Defendant ViewSonic Corporation</p> <p>25</p> <p>26 RASKIN PETER RUBIN & SIMON LLP</p> <p>27 TRACY ROMAN, ESQ</p> <p>28 1801 Century Park East, 23rd Floor</p> <p>29 Los Angeles California 90071</p> <p>30 for Defendant ViewSonic Corporation</p>	<p>1 Does anyone object to going forward and letting</p> <p>2 Miss Gaza join us as soon as she is able to dial in?</p> <p>3 MR. MERIDETH: That's okay with us</p> <p>4 MR. CHRISTENSON: We have no objection, Your</p> <p>5 Honor</p> <p>6 SPECIAL MASTER POPPITI: Thank you. That</p> <p>7 may be -- Miss Gaza?</p> <p>8 MS. GAZA: Good afternoon, Your Honor. I am</p> <p>9 very sorry for being delayed.</p> <p>10 SPECIAL MASTER POPPITI: Not at all. Thank</p> <p>11 you.</p> <p>12 I was just proposing that we start with</p> <p>13 LPL's application dated August 8th, 2007, to produce</p> <p>14 assembly instructions.</p> <p>15 MR. AMBROZY: Yes, Your Honor, it's Rel</p> <p>16 Ambrozy.</p> <p>17 SPECIAL MASTER POPPITI: And let's go ahead</p> <p>18 and do that.</p> <p>19 MR. AMBROZY: Your Honor, what we were</p> <p>20 asking for as the assembly instructions from Tatung was,</p> <p>21 basically, a category of documents that --</p> <p>22 SPECIAL MASTER POPPITI: Counsel, before you</p> <p>23 get too far into your presentation, I have to tell you</p> <p>24 that I am somewhat troubled with the fact that, both</p>
Page 3	Page 5
<p>1 MR. KIRK: Yes, Your Honor. Richard Kirk</p> <p>2 from The Bayard Firm for Plaintiff, LG Phillips, LCD</p> <p>3 Company, Ltd. With me on the line, from Washington, are</p> <p>4 my colleagues from McKenna, Long & Aldridge, Cass</p> <p>5 Christenson and Rel Ambrozy.</p> <p>6 MR. HEISMAN: Good afternoon, Your Honor.</p> <p>7 This is Jim Heisman from ViewSonic Corporation. I am</p> <p>8 from Connolly Bove in Wilmington.</p> <p>9 With me on the line today is Tracy Roman</p> <p>10 from the Raskin Peter firm in Los Angeles.</p> <p>11 MS. HO: Your Honor, I am not sure if Anne</p> <p>12 Gaza has dialed in yet.</p> <p>13 MR. MERIDETH: And Frank Merideth is also on</p> <p>14 the line for the Tatung defendants.</p> <p>15 SPECIAL MASTER POPPITI: Thank you. If you</p> <p>16 could shoot Anne an e-mail.</p> <p>17 MS. HO: I am sending her an e-mail right</p> <p>18 now.</p> <p>19 (Discussion off the record.)</p> <p>20 SPECIAL MASTER POPPITI: While we are</p> <p>21 waiting for Anne, I would propose that we work, saving</p> <p>22 some of the tedious for last, if you will, I have,</p> <p>23 what's marked for my purposes, No. 40, and that is --</p> <p>24 let me ask this question because it does involve Tatung:</p>	<p>1 with respect to this application and another application</p> <p>2 that we will be looking at, that the meet and confer</p> <p>3 history is not fully described in your application.</p> <p>4 And what I am rather specifically referring to is that,</p> <p>5 although being informed that there was a July 11, 2007,</p> <p>6 e-mail from Mr. Connor to Valerie Ho requesting the</p> <p>7 production that we are about to address, and then being</p> <p>8 informed that some time went by before other</p> <p>9 correspondence was sent, I believe, and somebody correct</p> <p>10 me if I am wrong, that it was July 31st.</p> <p>11 MR. AMBROZY: That's correct, Your Honor.</p> <p>12 SPECIAL MASTER POPPITI: That, low and</p> <p>13 behold, there was a teleconference that occurred July</p> <p>14 the 12th where Miss Ho conferred with Mr. Connor, and</p> <p>15 that's nowhere to be found, and I gather, based on</p> <p>16 Miss Ho's representation, and I can hear her with</p> <p>17 respect to that, that the meet and confer of that date</p> <p>18 forms the sum and substance of their response to this</p> <p>19 August 10 application, unless I am missing something</p> <p>20 here?</p> <p>21 MR. AMBROZY: No, Your Honor, Your Honor.</p> <p>22 apologize for that. What happened was Mr. Cormac -- I</p> <p>23 mean Mr. Connor did write the e-mail on the 11th, and</p> <p>24 then I just found out today, actually, that he did have</p>

Hearing

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 a conference call with Miss Ho and Mr. Merideth on the</p> <p>2 12th. Mr. Connor had actually left for paternity leave</p> <p>3 and was out of the office for several weeks. And we</p> <p>4 actually referenced in our letters, if you turn to</p> <p>5 Exhibit C, I did state in that letter, that, As you</p> <p>6 know, Cormac has been out of the office -- in Exhibit C</p> <p>7 to our letter brief, we stated in the second paragraph</p> <p>8 that, "As you know, Cormac has been out of the office,</p> <p>9 and, so, unless we missed it, we still have not received</p> <p>10 the assembly instructions."</p> <p>11 So, Your Honor, I apologize for that. I was</p> <p>12 under the impression that there had not been a</p> <p>13 discussion between Mr. Merideth and Miss Ho and</p> <p>14 Mr. Connor.</p> <p>15 SPECIAL MASTER POPPITI: Okay. Well,</p> <p>16 Miss Ho, is there anything else to be said about that</p> <p>17 miscommunication, if you will?</p> <p>18 MS HO: Only that we were not aware that</p> <p>19 Mr. Connor was out of the office, and it was our</p> <p>20 impression, after the meet and confer with Mr. Connor,</p> <p>21 that these issues had been resolved, so we were very</p> <p>22 surprised to see these motions to compel.</p> <p>23 MR. AMBROZY: So, I don't know the</p> <p>24 procedure, Your Honor. We could discuss this off-line,</p>	<p>1 that meet and confer.</p> <p>2 And I think, Mr. Christenson, if I</p> <p>3 understand what you just told me --</p> <p>4 MR. AMBROZY: Mr. Ambrozy, Your Honor.</p> <p>5 SPECIAL MASTER POPPITI: I am sorry,</p> <p>6 Mr. Ambrozy, thank you -- that you just learned that the</p> <p>7 meet and confer occurred on July 12th, you learned of</p> <p>8 that fact today. Well, I learned of that fact on August</p> <p>9 the 10th.</p> <p>10 Even if there is some, I don't know whether</p> <p>11 there will be, some disagreement as to what occurred</p> <p>12 during the course of the meet and confer, I was put on</p> <p>13 notice and you all representing LPL were put on notice</p> <p>14 on August 10 that there was a discussion on July 12th</p> <p>15 and should be prepared today to discuss the sum and</p> <p>16 substance of that meet and confer.</p> <p>17 So I'd like to hear from Miss Ho, please.</p> <p>18 MS HO: Yes, Your Honor. During that meet</p> <p>19 and confer, Mr. Connor, basically, raised the issues</p> <p>20 that were raised in his e-mails to me that were sent on</p> <p>21 July 11th. In short, he had asked for the assembly</p> <p>22 instructions and the module specifications. And at the</p> <p>23 meet and confer, we informed him that we had produced</p> <p>24 both categories of documents, and that whatever we could</p>
Page 7	Page 9
<p>1 but I think, even with this misunderstanding, I think we</p> <p>2 are still at, I believe we are at an impasse based on</p> <p>3 Tatung's response to our letter brief of August 8th.</p> <p>4 SPECIAL MASTER POPPITI: Well, what I'd like</p> <p>5 to understand, and I realize that we are working a</p> <p>6 little bit at a disadvantage because Mr. Connor is not</p> <p>7 on the line, but let me do this: I understand the</p> <p>8 nature of the application, and I believe I understand</p> <p>9 the nature of the response, and the nature of the</p> <p>10 response is framed in terms of that conference that took</p> <p>11 place on July 11. I would like -- I am sorry, on July</p> <p>12 12th.</p> <p>13 I would like the issue to be framed against</p> <p>14 that because that's the reality of where we are. I</p> <p>15 mean, I understand that there was miscommunication, but</p> <p>16 if I am satisfied that either an understanding was</p> <p>17 reached, and there is where we are all working with, at</p> <p>18 least some of us on the phone, are working with a hand</p> <p>19 tied behind our back, or if the sum and substance of</p> <p>20 what Miss Ho is suggesting occurred at the meet and</p> <p>21 confer meets the production request, I think I should</p> <p>22 deal with it in that fashion.</p> <p>23 So, I do want to hear from Miss Ho, from her</p> <p>24 perspective, what was discussed during the course of</p>	<p>1 locate, we had already provided to LPL. And that was</p> <p>2 the gist of the conversation with respect to the</p> <p>3 documents that are being sought in the two motions.</p> <p>4 SPECIAL MASTER POPPITI: And the only</p> <p>5 question I have is -- and you have provided me with a</p> <p>6 copy of assembly instructions; correct?</p> <p>7 MS HO: Yes, Your Honor. And these are</p> <p>8 just examples.</p> <p>9 SPECIAL MASTER POPPITI: Yes. I understand</p> <p>10 that.</p> <p>11 Are the assembly instructions, as you</p> <p>12 understand them, do they form what you understand to be</p> <p>13 the request of LPL for working instructions? And what</p> <p>14 do you understand to be the difference, if any, and are</p> <p>15 there any such things that have not been produced that</p> <p>16 are called "working instructions"?</p> <p>17 MS HO: Well, to clarify, Your Honor, there</p> <p>18 are working instructions, and those documents are Tatung</p> <p>19 America documents that have been provided to LPL long</p> <p>20 ago, back in January and February of this year.</p> <p>21 In connection with Mr. Connor's request on</p> <p>22 the 11th, and LPL's motion, they are not seeking, as I</p> <p>23 understand it, working instructions. They are seeking</p> <p>24 assembly instructions that were specifically referred to</p>

Hearing

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 in Mr. Vincent Lu's deposition</p> <p>2 SPECIAL MASTER POPPITI: Yes. I am aware of</p> <p>3 the reference and I am aware that they do refer to</p> <p>4 assembly instructions</p> <p>5 MS HO: And those are the assembly</p> <p>6 instructions that were attached, or at least we attached</p> <p>7 two samples, and those assembly instructions have been</p> <p>8 provided to LPL</p> <p>9 MR AMBROZY: If I may, Your Honor?</p> <p>10 SPECIAL MASTER POPPITI: Please</p> <p>11 MR AMBROZY: The distinction we drew was</p> <p>12 specifically to the working instructions versus the</p> <p>13 assembly instructions because the assembly instructions,</p> <p>14 first of all, were for Tatung Company products, not for</p> <p>15 Tatung America. And, secondly, the assembly</p> <p>16 instructions are somewhat detailed, and according to</p> <p>17 Mr. Lu's deposition testimony, they are -- they</p> <p>18 basically teach the operators how to assemble the parts,</p> <p>19 and I am quoting, Teach the operators how to assemble</p> <p>20 the parts together and also the matters that they should</p> <p>21 have paid attention to</p> <p>22 So, we took particular care to make sure</p> <p>23 that we were both on the same page, asking for assembly</p> <p>24 instructions, and it was our understanding that the</p>	<p>1 vendors. And then there are the plasma televisions, the</p> <p>2 42-inch, 46-inch, and 50-inch, and that's it in terms of</p> <p>3 the accused products</p> <p>4 So, I don't understand where Mr. Ambrozy is</p> <p>5 getting the 26 categories of accused products</p> <p>6 MR AMBROZY: Because it does go to the</p> <p>7 second grouping of products. It encompasses both the</p> <p>8 23. It goes to the products accused under the first</p> <p>9 constructions and then under the second appeals</p> <p>10 construction</p> <p>11 MS HO: Well, Your Honor, first of all, we</p> <p>12 disagree that documents relating to the other products</p> <p>13 would be relevant at this point because Your Honor has</p> <p>14 issued your claim constructions and LPL has taken a</p> <p>15 position. So, as far as we are concerned, there is a</p> <p>16 list of accused products and those are the TLMs and the</p> <p>17 plasmas</p> <p>18 Having said that, from looking at the</p> <p>19 assembly instructions, and I don't have all of them in</p> <p>20 front of me, it appears that we did produce all of the</p> <p>21 assembly instructions we could find on both the LCD</p> <p>22 monitors and the plasmas, and they weren't limited to</p> <p>23 just the narrowed list of accused products that LPL</p> <p>24 recently provided</p>
Page 11	Page 13
<p>1 assembly instructions were different than what had</p> <p>2 already been produced</p> <p>3 But in regard to what's been produced, there</p> <p>4 is really only six -- out of the 23 accused products,</p> <p>5 there is only six groups of accused products that we</p> <p>6 have a -- that Tatung has produced assembly instructions</p> <p>7 for. And, so, that leaves 17 accused product groups</p> <p>8 without assembly instruction</p> <p>9 SPECIAL MASTER POPPITI: Miss Ho</p> <p>10 MS HO: Your Honor, I don't believe that's</p> <p>11 correct. I don't know which accused product groups</p> <p>12 Mr. Ambrozy is referring to</p> <p>13 As Your Honor may or may not know, in LPL's</p> <p>14 recent interrogatory responses, they provided two sets</p> <p>15 of accused products. One set contains products that LPL</p> <p>16 contends are infringing if Your Honor's conception of</p> <p>17 rear mountable is adopted, and that list is</p> <p>18 substantially smaller than the original list of accused</p> <p>19 products</p> <p>20 And, in fact, there are, basically, only two</p> <p>21 categories of accused products that remain accused in</p> <p>22 light of Your Honor's claim construction. And those</p> <p>23 are, one, the TLM LCD monitors which they know we do not</p> <p>24 assemble to begin with. We buy those from third-party</p>	<p>1 MR AMBROZY: I think that's what's</p> <p>2 troubling, Your Honor, is that, during the deposition of</p> <p>3 Mr. Lu, we -- I specifically asked whether -- and he had</p> <p>4 gathered a lot of the documents, he had gathered the</p> <p>5 assembly drawings and so forth and we specifically asked</p> <p>6 whether he had gathered any of the assembly</p> <p>7 instructions, and he responded that he had not. And I</p> <p>8 asked whether he was aware if anybody else had, and he</p> <p>9 responded he had not</p> <p>10 So, all we are looking for is either Tatung</p> <p>11 to go and ask specifically for the assembly instructions</p> <p>12 for the accused products or a representation that they</p> <p>13 have asked and they don't exist</p> <p>14 MR MERIDETH: Your Honor, we have</p> <p>15 represented, and represent again here, that, with</p> <p>16 respect to the accused TLM products, we do not assemble</p> <p>17 those, that is, Tatung does not assemble those, they buy</p> <p>18 them from a third-party vendor, and we do not have</p> <p>19 assembly instructions for those products</p> <p>20 SPECIAL MASTER POPPITI: And that's -- go</p> <p>21 ahead. I am sorry. That is with respect to the</p> <p>22 products?</p> <p>23 MR MERIDETH: That's correct. With respect</p> <p>24 to the plasma products, we have produced documents</p>

Hearing

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 called, quote, assembly instructions, and we have given 2 the Bates Nos for those instructions to LPL. 3 SPECIAL MASTER POPPITI: When were they 4 produced? 5 MS HO: I believe it was before Mr Lu's 6 deposition 7 SPECIAL MASTER POPPITI: Okay Thank you 8 MR MERIDETH: And we represented, in 9 Mr Lu's deposition, that all of those documents have 10 been produced We have reached agreement, we thought, 11 with Mr Connor that they had been produced, and we 12 attached copies of those which we produced and the 13 ranges of bates numbers for the assembly instructions 14 that we produced And these are documents that are 15 titled "Assembly Instructions" 16 We have also produced the exploded-view 17 documents and we have also produced the portions of the 18 CAD CAM drawings that have been ordered by Your Honor 19 So, we have complied in all respects, and I don't know 20 what more we could do We have represented that we have 21 produced all that we have in our possession We have 22 demonstrated that we have produced them except with 23 respect to the FLM, which we have represented we do not 24 assemble I don't know what more we could do</p>	<p>1 be denied as moot Okay Just give me one moment, 2 please 3 No 41, as I have it marked for my purposes, 4 is LPL's application for additional inspection of prior 5 art devices, and, as I understand it, there is a 6 proposal that is either on the table or was on the table 7 for discussion? 8 MS HO: With respect to Tatung, Your Honor? 9 SPECIAL MASTER POPPITI: Yes 10 MR AMBROZY: Your Honor, that is correct, 11 and I actually believe that, based on that, that we 12 might be able to come to some agreement on accomplishing 13 the inspections, and if I could just talk to Ms Roman 14 for one minute -- 15 SPECIAL MASTER POPPITI: Do you want to do 16 that off-line because I am happy to put you on hold so I 17 don't necessarily need to participate or hear the 18 conversation? 19 MR AMBROZY: Tracy, are you there? 20 MS ROMAN: Yes, I am That's fine 21 SPECIAL MASTER POPPITI: Do you want to do 22 it that way? 23 MR AMBROZY: Yes, Your Honor I think it's 24 going to be quicker</p>
Page 15	Page 17
<p>1 SPECIAL MASTER POPPITI: You are saying 2 that, I think it's obvious, based on what you have just 3 said, regardless of whether Judge Farnan adopts my 4 findings and recommendations or whether he does 5 something different with them? 6 MR MERIDETH: That's correct 7 SPECIAL MASTER POPPITI: Mr Ambrozy, I 8 don't know that you can have any more than the 9 representation that it sounds like you have received 10 before 11 I am not trying to question what Mr Connor 12 would say or what he wouldn't say, but counsel is 13 telling me that the same -- the representation that was 14 just made was made to him and that they were satisfied 15 that there would be no further discussion about it 16 Now, regardless of that part, it seems to me 17 that what you have, for the record, is a representation 18 that everything that has been requested with respect to 19 the universe of accused products, notwithstanding what 20 claim construction did to that universe existing the day 21 before as opposed to the day after, you have all the 22 information all the production as the accused products 23 existed the day before claim construction 24 I am satisfied that the application should</p>	<p>1 MR MERIDETH: Well, on behalf of the Tatung 2 defendants, this is another one of these failure to meet 3 and confer situations 4 We indicated, in my correspondence, that if 5 there was a compelling reason why the reexamination 6 ought to take place, that we would be happy to consider 7 that and nobody ever contacted us or suggested, until 8 this motion was filed, that there was any reason 9 When the motion was filed, we immediately 10 responded by saying, We would, in fact, make this stuff 11 available consistent with our expert looking at the 12 material 13 And, so, I don't see, frankly, that it's 14 quite fair to us to have to continue to participate in 15 wrangling over when this is going to be done It should 16 never have been filed and reached this stage in the 17 first place 18 And I don't think, you know, Well, okay, 19 they didn't comply, now we will go off-line and discuss 20 this, is not fair to us They have to comply with the 21 meet and confer requirements 22 MR AMBROZY: We believe we did meet -- we 23 did comply with the meet and confer requirements As we 24 read Mr Merideth's letter, the compelling reason would</p>

Hearing

6 (Pages 18 to 21)

Page 18	Page 20
<p>1 be something short of a Court order to do so, and, so, 2 that was the reason we filed the motion. We felt we 3 were at an impasse and that also goes for ViewSonic's 4 requirements as well.</p> <p>5 SPECIAL MASTER POPPITI: I am going to 6 permit the conversation to occur. I mean, I am troubled 7 by how these wound up on my desk, there is no question 8 about it. At the same time, it seems to me the better 9 path forward, in terms of the system, is to simply 10 permit you to discuss it one more time and tell me that 11 it's either resolved or not resolved, and then I will 12 determine whether or not there is any relief that should 13 be granted.</p> <p>14 MR. AMBROZY: Thank you, Your Honor.</p> <p>15 SPECIAL MASTER POPPITI: All the clocks call 16 out a different time. It is 4:01. May somebody propose 17 a time, please?</p> <p>18 MR. AMBROZY: I think 4:10, Your Honor, 19 should be more than enough.</p> <p>20 SPECIAL MASTER POPPITI: All right. Thank 21 you.</p> <p>22 (Discussion off the record.)</p> <p>23 SPECIAL MASTER POPPITI: Can I expect, then, 24 there has been substantial agreement on what I referred</p>	<p>1 specifications were produced.</p> <p>2 SPECIAL MASTER POPPITI: Okay. Mr. Ambrozy?</p> <p>3 MR. AMBROZY: Yes, Your Honor. We, 4 basically, moved to have Tatung identify the LCD modules 5 in each of the accused products because when we took the 6 deposition of Mr. Lu, who, again, was Tatung Company's 7 30(b)(6) witness, he identified, or he stated for the 8 record that when the monitors are designed, they either 9 get the LCD module from the LCD module vendor or they 10 get the specifications from the vendor. And, so, we are 11 -- by his testimony, it's our understanding that Tatung 12 Company is in possession of the identification of the 13 modules used in its products.</p> <p>14 And, so, again, we moved to have that 15 information produced because we were unable to identify, 16 from the production, which modules pertain to which 17 monitors. Although there were some LCD module 18 specifications produced, without knowing, or without 19 identification from Tatung as to which one -- which LCD 20 module is in which monitor, the identification of the 21 LCD module specifications really doesn't do us much good 22 unless it's our understanding Mr. Merideth's letter on 23 August 1, where he identified all the LCD module 24 specifications, that his understanding that that's the</p>
Page 19	Page 21
<p>1 to us 41?</p> <p>2 MR. AMBROZY: There is, Your Honor.</p> <p>3 SPECIAL MASTER POPPITI: Okay. Does Tatung 4 agree?</p> <p>5 MS. HO: Yes, Your Honor.</p> <p>6 SPECIAL MASTER POPPITI: No. 42 is LPL's 7 application to compel Tatung to identify LCD modules 8 used in each of the accused products, correlate each 9 accused products with an LCD module.</p> <p>10 MR. AMBROZY: Yes, Your Honor. Again, this 11 was, again, based on my understanding that we had not 12 received any reply to our July 11th e-mail, and I 13 apologize for that.</p> <p>14 SPECIAL MASTER POPPITI: Well, let me ask 15 what the understanding was as of, for the record, as of 16 the date of the meet and confer that I now know took 17 place.</p> <p>18 MS. HO: Your Honor, it was very similar. 19 Mr. Connor inquired as to whether we had produced module 20 specifications and we told him that we had produced all 21 of the specifications we could locate for the accused 22 products that were accused at the time, noting that the 23 list has grown substantially smaller at this point, but 24 we were going off of the broader list when the</p>	<p>1 universe of LCD modules in their products, then we can 2 go with that representation.</p> <p>3 MR. MERIDETH: It is not, and we have made 4 that clear that it is not. We have what I think is a 5 basic misunderstanding and we have tried to deal with 6 before.</p> <p>7 One, we do not -- when you talk about LCD 8 specifications, you are talking about something that 9 describes the components within the LCD module. Those 10 are not matters which are of concern to our client.</p> <p>11 Our client, Tatung, wants the dimensions, 12 and I think Mr. Lu made it clear, in his deposition, 13 that he was talking about the dimensions of the LCD 14 module, not the internal specifications of the LCD 15 module, which are not of concern to us, so long as the 16 module performs in the manner that our customer 17 specifies in its -- in its purchase order request or 18 proposal to us.</p> <p>19 We also have always made it very clear that 20 we will produce those specifications that we have, but 21 they are not a matter that we have for every single 22 product that we have produced.</p> <p>23 Third, we indicated that we produced and we 24 have produced again, for a second time, a list of</p>

Hearing

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 correlations, although such correlations were never 2 requested in any of the discovery, we did produce a list 3 of the correlations of the products that we made in 4 connection with the case that was brought by LPL out in 5 California that covers the vast bulk of the LCD 6 products 7 We are attempting to obtain, from our 8 vendors, the specifications with respect to the plasma 9 products, and I think we have some but we have not yet 10 obtained all of the specifications, but it's not 11 something that we normally maintain in the ordinary 12 course of our business. 13 We do not correlate the specifications 14 regarding the internal components of the module. What's 15 important to us, again, is the dimension. And we have 16 indicated that repeatedly. We have provided what we 17 have, and, indeed, this correlation that they are 18 requesting now was never requested in any discovery. 19 MR. AMBROZY: The correlation was 20 specifically because, it's our understanding from the 21 record and from Mr. Lu's testimony, that there is 22 correlation that occurs. A monitor is designed around a 23 specific LCD module. And, so, even if you only get the 24 written specification and Tatung Company does not</p>	<p>1 clarifying something that Mr. Merideth said 2 MS. HO: Yes, Your Honor. I did want to 3 raise the point that LPL really did not ask for this 4 correlation data, and, in fact, when I had my meet and 5 confer with Mr. Connor, the issue of correlating the 6 module model numbers to the product model numbers was 7 never raised. 8 The only issue that was raised had to do 9 with the production of module specifications. LPL never 10 served a document request that sought correlation data, 11 and it never sought a meet and confer regarding 12 correlation data even after Mr. Lu's deposition had been 13 taken. 14 MR. AMBROZY: Let me point out, for the 15 record, that Mr. Lu's deposition occurred after the 16 close on March 30th because Tatung consistently produced 17 new documents as the new monitors that were coming on 18 the market that should have been produced earlier. 19 So, Mr. -- 20 SPECIAL MASTER POPPITI: Counsel, it is fair 21 to say, we had a cleanup opportunity in terms of making 22 applications; fair? 23 MR. AMBROZY: In what sense, Your Honor? 24 SPECIAL MASTER POPPITI: I can't give you</p>
Page 23	Page 25
<p>1 receive the LCD module physically, there is still an 2 identification of the module inside that monitor, and 3 that's the information we are after. 4 So, even if you don't have -- if Tatung 5 Company is not in possession of the specifications for 6 the LCD module, we at least want an identification of 7 that LCD module and we will find the specifications 8 ourselves. 9 MR. MERIDETH: First of all, we provided you 10 what we have already and we don't maintain that as part 11 of the ordinary course of our business. We did generate 12 it in connection with a prior case. But, in this case, 13 it was never requested. 14 And we really provided it only as a courtesy 15 because you made a request that had, in fact, requested 16 it, if I recall correctly, from the first hearing that I 17 attended in Delaware with Mr. Kreisman, and that's where 18 it was produced. 19 SPECIAL MASTER POPPITI: And you say that in 20 your response. 21 MR. MERIDETH: Yes, sir. 22 MS. HO: Just to clarify, Your Honor. 23 MR. AMBROZY: Let me finish, please. 24 SPECIAL MASTER POPPITI: Miss Ho is</p>	<p>1 the date, but I know that I established a date 2 subsequent to a fact discovery where if you didn't think 3 you had what you needed, you could make an application. 4 Somebody remind me of the date, that would be helpful. 5 This is not cleanup. If there is -- and I 6 am satisfied, unless somebody can show me somewhere in 7 the record where there is an application for the 8 correlation data that you are now requesting, I am happy 9 to look at that. If you can show me some agreement, 10 other than the agreement that was forged between 11 Mr. Merideth and Mr. Kreisman, I am happy to look at 12 that. But absent that, there is nothing for me to 13 consider other than the application, which is denied. 14 MR. AMBROZY: Your Honor, if I may. I was 15 asking Miss Ho to re-send whatever Mr. Kreisman produced 16 in Delaware so that I can make sure we are all on the 17 same page. 18 SPECIAL MASTER POPPITI: Miss Ho. 19 MS. HO: Sure. We will be happy to do that. 20 Your Honor. 21 SPECIAL MASTER POPPITI: Okay. Thank you. 22 MR. AMBROZY: Thank you, Your Honor. 23 SPECIAL MASTER POPPITI: Now, let me make a 24 comment with respect to what I have numbered 37, which</p>

Hearing

8 (Pages 26 to 29)

Page 26	Page 28
<p>1 is the defendants' request for 30(b)(6) deposition of</p> <p>2 LPL, and we will go from there</p> <p>3 I think it's fair to say that, unless</p> <p>4 somebody takes issue with this, and I am happy to hear</p> <p>5 you on it, that, essentially, what I am being asked to</p> <p>6 do in terms of the work through this is I think I am</p> <p>7 being asked to be part of a meet and confer process in</p> <p>8 the sense there hasn't been a notice that can be tested;</p> <p>9 is that a fair comment?</p> <p>10 MR MERIDETH: Yes, Your Honor, I believe it</p> <p>11 is</p> <p>12 MS ROMAN: I agree that that is fair, but I</p> <p>13 would add that it's sort of --</p> <p>14 SPECIAL MASTER POPPITI: I am not suggesting</p> <p>15 that's a problem.</p> <p>16 MS ROMAN: Right Okay</p> <p>17 SPECIAL MASTER POPPITI: I want to make sure</p> <p>18 everybody agrees with -- not make sure that you agree</p> <p>19 but have some understanding as to whether you agree with</p> <p>20 that initial proposition</p> <p>21 MS ROMAN: There has been no notice served,</p> <p>22 that's correct</p> <p>23 SPECIAL MASTER POPPITI: LPL, do you agree</p> <p>24 with my characterization of that?</p>	<p>1 correct</p> <p>2 SPECIAL MASTER POPPITI: So, what I would</p> <p>3 like to do, very briefly, I'd like you to make whatever</p> <p>4 record, other than what you have made in here in paper,</p> <p>5 of the 30(b)(6) deposition and whether or not there</p> <p>6 should be one permitted to go forward</p> <p>7 And let me ask you to frame your respective</p> <p>8 remarks against what I expect should have been</p> <p>9 relatively clear on a number of different occasions when</p> <p>10 the subject came up, what's going to happen after claim</p> <p>11 construction and what's going to happen as we see</p> <p>12 additional production that, for whatever reason, was not</p> <p>13 forthcoming earlier; is that fair? We have had that</p> <p>14 discussion before</p> <p>15 MS ROMAN: Yes, Your Honor</p> <p>16 MR MERIDETH: Tatung agrees as well</p> <p>17 MR CHRISTENSON: Yes, Your Honor</p> <p>18 SPECIAL MASTER POPPITI: And I'd like to</p> <p>19 know whether you agree with me that each time that</p> <p>20 subject was broached, I took the opportunity to say that</p> <p>21 if, depending on the circumstances, if there is a need,</p> <p>22 based on new information, based on claim construction,</p> <p>23 you make the application because I would be open to</p> <p>24 considering the application</p>
Page 27	Page 29
<p>1 MR CHRISTENSON: Just so that I am clear, I</p> <p>2 think what you are suggesting is that there is not a</p> <p>3 formal notice that is the subject of a formal motion?</p> <p>4 SPECIAL MASTER POPPITI: Right</p> <p>5 MR CHRISTENSON: But, rather, we are</p> <p>6 talking about proposed deposition topics?</p> <p>7 SPECIAL MASTER POPPITI: That's correct</p> <p>8 MR CHRISTENSON: Obviously, we have a</p> <p>9 dispute about those topics and also about whether there</p> <p>10 should be any deposition</p> <p>11 SPECIAL MASTER POPPITI: Correct One</p> <p>12 should be driving the other, but that's not the posture</p> <p>13 that we are really in, and what I think you are looking</p> <p>14 for is for me to be somewhat involved in these</p> <p>15 discussions except for asking me whether there should be</p> <p>16 a 30(b)(6) in the first instance; correct?</p> <p>17 MS ROMAN: I am actually not certain I</p> <p>18 understood</p> <p>19 SPECIAL MASTER POPPITI: Well, there is an</p> <p>20 application for a 30(b)(6) deposition That is opposed</p> <p>21 If we get beyond that, then we really are into a meet</p> <p>22 and confer or some discussion about the parameters of</p> <p>23 the 30(b)(6)</p> <p>24 MS ROMAN: Yes, Your Honor That's</p>	<p>1 I don't know if they are my exact words and</p> <p>2 I really didn't think it was a good use of my time and</p> <p>3 your resources to go back and comb through the</p> <p>4 transcripts when we have broached that issue</p> <p>5 Is that a fair characterization of what you</p> <p>6 think I suggested when we had these conversations</p> <p>7 before?</p> <p>8 MR CHRISTENSON: Your Honor, I think I</p> <p>9 clearly agree with you, Your Honor, that you have, in</p> <p>10 the past, indicated that there would be, potentially, an</p> <p>11 issue with respect to depositions of LPL based on</p> <p>12 supplemental discovery</p> <p>13 I do think that -- what I am not clear about</p> <p>14 is when those discussions occurred I think those</p> <p>15 discussions may have occurred after LPL had already been</p> <p>16 deposed, and the only reason I point out that timing is</p> <p>17 because, obviously, the defendants went forward, took</p> <p>18 the discovery that they took from LPL LPL went forward</p> <p>19 with the defendants' depositions and took deposition</p> <p>20 discovery that was extensive from the defendants as</p> <p>21 well, and we all did that with a, you know, with the</p> <p>22 existing document productions that we had from each</p> <p>23 other at the time of the depositions</p> <p>24 And I think it is important to note that we</p>

Hearing

9 (Pages 30 to 33)

Page 30	Page 32
<p>1 have had voluminous supplemental production from all of</p> <p>2 the defendants in this case after depositions, after the</p> <p>3 close of discovery</p> <p>4 SPECIAL MASTER POPPITI: I am mindful of</p> <p>5 that</p> <p>6 MR CHRISTENSON: And we have received</p> <p>7 documents that we would have used in those depositions</p> <p>8 and would have liked to have used in those depositions</p> <p>9 I just want to make sure that that's part of</p> <p>10 the consideration here, and I think it's an important</p> <p>11 point, but there is no question, Your Honor, that you</p> <p>12 have, when this issue has surfaced, you have indicated</p> <p>13 that you would consider, at least, further deposition</p> <p>14 testimony</p> <p>15 SPECIAL MASTER POPPITI: Okay And with</p> <p>16 that backdrop, let me hear what you have to say, please</p> <p>17 MR CHRISTENSON: Yes, Your Honor Would</p> <p>18 you like to hear from LPL first?</p> <p>19 SPECIAL MASTER POPPITI: No I'd like to</p> <p>20 hear from the applicant</p> <p>21 MR CHRISTENSON: Yes, sir</p> <p>22 MS ROMAN: Your Honor, I don't think I need</p> <p>23 to go into too much greater detail than what we have</p> <p>24 already put forth in our previous letter briefs or</p>	<p>1 this, your application, although there has even been</p> <p>2 some discovery, very recently, that may form the basis</p> <p>3 of some questions that you want to ask, it is really</p> <p>4 driven by the claim construction as it presently exists?</p> <p>5 MS ROMAN: Correct, Your Honor</p> <p>6 SPECIAL MASTER POPPITI: And until that</p> <p>7 claim construction occurred, there were applications</p> <p>8 that impacted on the scope of some of the discovery that</p> <p>9 occurred earlier in those depositions?</p> <p>10 MS ROMAN: Yes, Your Honor</p> <p>11 SPECIAL MASTER POPPITI: Mr Christenson, or</p> <p>12 who is going to be dealing with it, please?</p> <p>13 MR CHRISTENSON: Yes This is Cass</p> <p>14 Christenson for LPL, Your Honor</p> <p>15 What issue would you like me to speak to</p> <p>16 again, please?</p> <p>17 SPECIAL MASTER POPPITI: Just the issue as</p> <p>18 to whether a 30(b)(6) deposition should go forward in</p> <p>19 light of claim construction</p> <p>20 MR CHRISTENSON: Your Honor, when you say,</p> <p>21 "in light of claim construction," certainly, the claim</p> <p>22 construction had not been resolved at the time of LPL's</p> <p>23 original deposition, that, of course, you know, by the</p> <p>24 same token, it had not been resolved at the time we</p>
Page 31	Page 33
<p>1 status reports from I believe it was July 27th and</p> <p>2 August 3rd</p> <p>3 The deposition goes hand-in-hand with the</p> <p>4 additional document discovery that Your Honor ordered to</p> <p>5 be produced It's effectively not a new deposition or a</p> <p>6 new discovery It goes hand-in-hand with the discovery</p> <p>7 that was already ordered as proper discovery It was</p> <p>8 simply discovery that, based on the objections that Your</p> <p>9 Honor sustained from the early on state of the discovery</p> <p>10 of this case, could not be had until after the claim</p> <p>11 construction order had been submitted</p> <p>12 We think that the deposition that we are</p> <p>13 looking to take, regardless of the topics, but the fact</p> <p>14 that a deposition has to be taken and that it has to</p> <p>15 occur now as opposed to something that could have been</p> <p>16 covered before the claim construction was to no fault to</p> <p>17 the defendants</p> <p>18 We certainly tried to get this information</p> <p>19 in advance of the claim construction order, but it was</p> <p>20 determined that that was not appropriate discovery at</p> <p>21 that time</p> <p>22 SPECIAL MASTER POPPITI: And what you have</p> <p>23 done, I think, by virtue of your comments, is focused on</p> <p>24 what I think is important, and I want LPL to respond to</p>	<p>1 deposed the defendants, and I think that there was an</p> <p>2 understanding, and we have cited this in our, I think</p> <p>3 our August 14 letter, there was an argument by ViewSonic</p> <p>4 before their deposition that, during the depositions,</p> <p>5 the parties should not be asking questions that were</p> <p>6 intended to establish someone's position about claim</p> <p>7 construction, infringement, validity, or enforceability</p> <p>8 Those are really all issues for the experts And I</p> <p>9 didn't really understand that that's something that was</p> <p>10 the focus of what they wanted to do in these requested</p> <p>11 depositions of LPL</p> <p>12 What I understood they wanted to do is to</p> <p>13 ask questions related to the documents that LPL recently</p> <p>14 has produced</p> <p>15 MS ROMAN: Your Honor, they can't be</p> <p>16 divorced from each other The documents that were</p> <p>17 recently produced were originally not produced under</p> <p>18 objection that they shouldn't be produced before claim</p> <p>19 construction And, so, now we are faced with this issue</p> <p>20 of having to investigate issues and subjects and facts</p> <p>21 that we couldn't have known about because we didn't have</p> <p>22 access to these documents, and these documents make us</p> <p>23 inquire about additional facts, not only those pertained</p> <p>24 or contained within the four corners of the documents,</p>

Hearing

10 (Pages 34 to 37)

Page 34	Page 36
<p>1 there are questions that naturally arise from issues 2 that are pointed out in these documents 3 For example, LPL had maintained, during the 4 beginning of the case, that it didn't make any products, 5 and it still does, I imagine, that it didn't make any 6 products that practice the invention or that had 7 mountable fastening elements on the back of their LPL 8 LCD modules But, from our perspective, the documents 9 that have just recently been produced contradict that 10 representation 11 It was not a fact that we had available to 12 us at the time of the deposition and we couldn't probe 13 into it, and now we'd like to probe into that 14 SPECIAL MASTER POPPITI: Mr Christenson 15 MR CHRISTENSON: Yes, Your Honor So, as I 16 understood what Ms Roman was saying, I think then, 17 again, it is coming back to the documents that we have 18 produced We, obviously, dispute what those documents 19 show We don't think those documents, in any way, 20 suggest that there was prior art that supports the 21 defendants' positions in this case 22 But, again, if the question is the scope and 23 what -- I think we are now sort of focusing on the scope 24 and whether, what, exactly, should be included in any</p>	<p>1 of our witnesses were deposed in March and April and 2 then we postponed some other depositions until June; 3 however, we did endeavor to collect and gather and 4 review and produce all of the documents that LPL was 5 seeking before those depositions took place And I 6 think that's distinguishable from what's going on here 7 with respect to the documents that LPL recently 8 produced They simply chose to withhold these documents 9 pending Your Honor's claim construction rulings 10 It could have produced the documents early 11 on, but it chose to wait, and because of that, we did 12 not get these documents until about three weeks ago 13 And there are facts that we simply just did not know 14 about before the discovery cutoff and at the time that 15 we were deposing LPL's witnesses 16 SPECIAL MASTER POPPITI: Mr Christenson, 17 isn't that a fair characterization of the record? 18 MR CHRISTENSON: Your Honor, it's not a 19 fair characterization because LPL, in fact, produced 20 voluminous discovery early in the case that, in many 21 respects, we produced discovery on issues that applied 22 to everyone before the defendants did 23 It's not correct, Your Honor -- 24 SPECIAL MASTER POPPITI: I am happy to have</p>
Page 35	Page 37
<p>1 deposition But with respect to whether there should be 2 a deposition, again, our position is that they went -- 3 the depositions went forward as to everyone in the same 4 time period and with partial document productions, for 5 various reasons, that, based on various objections that 6 all the parties made, and everybody was trying to get 7 other documents, we were trying to get OEM documents 8 from ViewSonic, we were trying to get discovery from 9 Tatung, I mean, this is an issue that everyone was 10 facing and we all took the depositions as best we could 11 And there was no suggestion at that point that the 12 defendants shouldn't have to depose LPL 13 So, we don't think it's appropriate for LPL 14 to be singled out and re-deposed based on supplemental 15 document production 16 MS HO: Your Honor, if I may comment on a 17 couple of issues quickly? 18 SPECIAL MASTER POPPITI: Please 19 MS HO: First of all, I don't think that's 20 an accurate representation of the discovery that has 21 taken place in this case 22 What we had tried to do is to produce all of 23 our supplemental document productions before the 24 depositions If Your Honor will recall, we did -- some</p>	<p>1 a hearing on each new document that was produced and 2 make a determination as to whether it could have been 3 produced earlier or whether there was a choice If you 4 want me to have that hearing, we will have it, we will 5 have it next week, and we will have it live in the 6 courtroom 7 Are you suggesting to me that these 8 documents were unknown to you at the time when they 9 would have been considered timely production? 10 MR CHRISTENSON: No, Your Honor, I am not 11 suggesting that 12 What I am suggesting is we had objections 13 that we asserted, there was motion practice, and -- 14 SPECIAL MASTER POPPITI: I understand motion 15 practice But I also understand choice And what I am 16 asking you is: Were these documents -- maybe I should 17 be more precise -- were these documents, each and every 18 individual one of them, the subject of motion practice 19 and the reason why you didn't produce any one or all of 20 them because I ruled that they did not have to be 21 produced at the time and you had the umbrella of a Court 22 order? 23 MR CHRISTENSON: Your Honor, I want to make 24 sure I understand what you are asking If what you are</p>

Hearing

11 (Pages 38 to 41)

Page 38	Page 40
<p>1 asking is: Could we have produced these documents 2 earlier than we did?, then the answer is yes 3 SPECIAL MASTER POPPITI: And there was no 4 Court order that said you had an umbrella? 5 MR CHRISTENSON: That is true, Your Honor 6 SPECIAL MASTER POPPITI: So it was choice 7 And, if you will, and I don't mean to suggest this sound 8 as pejorative, it was strategy. It's not that you 9 couldn't get to it. I think you just told me you knew 10 they existed 11 MR CHRISTENSON: I understand what you are 12 saying, Your Honor 13 SPECIAL MASTER POPPITI: And because of 14 that, I am going to permit a proposed 30(b)(6) 15 deposition 16 And now we will do what I think it's 17 important to set out to do, and, that is, to get through 18 the topics. Maybe, just maybe, it may be helpful if we 19 talk about some overarching principles here 20 MS ROMAN: Your Honor, that's exactly what 21 I had in mind as well. Mr. Miller and I have sort of 22 been trying to work towards that goal over the last 23 couple of days. And, if I might, I'd like to -- I mean, 24 one thing that was clear to me from the last time --</p>	<p>1 them, we could sharpen them, but I don't think that 2 that's going to serve anyone's purpose if there are some 3 overarching principles of how this deposition should go 4 forward 5 So, if you think it's going to be helpful to 6 have me participate, I will 7 MS ROMAN: I think it would simply because 8 there might be a couple of these overarching issues that 9 we still don't have an accord on to speak to the sense 10 of the overarching issues, so it would be helpful for 11 you to be informed on them as well 12 SPECIAL MASTER POPPITI: Does anyone 13 disagree? 14 MR CHRISTENSON: Your Honor, I agree with 15 that. I think that, you know, going in the logical 16 sequence of starting with the premise that you just 17 established, which is there will be a further 18 deposition, I think it makes sense to have your input on 19 the next logical issue, which is the general subject 20 matter and scope, rather than getting into the word 21 level, which is what Miss Roman was suggesting, or 22 subject areas, I am not sure what they are, but I do 23 think it would be helpful to have your input 24 SPECIAL MASTER POPPITI: Let's do it, then,</p>
Page 39	Page 41
<p>1 when ViewSonic had a motion for a protective order on 2 its deposition, LPL was very good at making it 3 understood that even though the literal words of the 4 topics might be written very broadly, they weren't going 5 to waste time diving into subjects that were irrelevant 6 for purposes of the case or waste time going over 7 cumulative issues, and -- but that's hard to capture 8 that when you are writing out these topics 9 And what we have tried to do over the last 10 couple of days is look through the topics and the 11 documents that have been produced to see if we could 12 identify what are the core issues, or, like, the spirit 13 of the deposition we are seeking. And if I can -- I 14 have come up with four of them, and if I could just put 15 those out there for the parties, it might help to serve 16 as, to use Your Honor's word, an "umbrella" under which 17 these topics fall and the parameters of the topics that 18 we have proposed 19 SPECIAL MASTER POPPITI: I am happy to 20 participate in that if you all think it would be helpful 21 to have me do that, but what has just been said is what 22 I expect should be done 23 I mean, you all know that any one of us 24 could take these topics and either, we could re-frame</p>	<p>1 please 2 MS ROMAN: The first issue relates to the 3 mechanical structure topics, and what we are really 4 seeking are facts concerning the fastening elements on 5 LPL's LCD products, or modules, as I will sometimes 6 probably call them, such as the structure, function, and 7 location of those fastening elements which would apply 8 to both the products that were prior art products made 9 before the U.S. patent filing date and post products 10 And this overarching issue, I believe, hits topics one 11 and two in our revised proposed topics, and perhaps also 12 five 13 So, it's not every structure, every assembly 14 of the module, the layers of the panel, the layers of 15 the back light, and those issues. The case is really 16 about the fastening elements, whether they are located 17 on the back, the front, or the side, and the structure 18 and function of those elements regardless of whether 19 they are used for mounting. But that's the focus of the 20 first overarching issue is the facts concerning the 21 fastening elements on the products 22 The second -- 23 SPECIAL MASTER POPPITI: Let's go one at a 24 time</p>

Hearing

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 MS ROMAN: Okay</p> <p>2 MR CHRISTENSON: Your Honor, as I</p> <p>3 understood what Miss Roman was saying, she is saying</p> <p>4 that those generally relate to topics one and two I</p> <p>5 won't get into the specifics of those topics because I</p> <p>6 understand we are going to focus right now on general</p> <p>7 categories</p> <p>8 SPECIAL MASTER POPPITI: Yes</p> <p>9 MR CHRISTENSON: With respect to the</p> <p>10 category, the "category" being structure, function,</p> <p>11 location with respect to fastening elements, I think</p> <p>12 that that is a relevant subject matter generally with</p> <p>13 respect to this case</p> <p>14 We have had discussions in meet and confer</p> <p>15 about to what extent LPL may or may not be able to</p> <p>16 answer those types of questions, but I think that that,</p> <p>17 generally, the subject matter is relevant, Your Honor</p> <p>18 SPECIAL MASTER POPPITI: Okay</p> <p>19 MR CHRISTENSON: I think that the bigger</p> <p>20 questions become, you know, What time period is really</p> <p>21 the relevant time period and what scope of products?</p> <p>22 Those are some of the more, I think, important issues</p> <p>23 that would need to be resolved there</p> <p>24 SPECIAL MASTER POPPITI: Well, then,</p>	<p>1 are probable</p> <p>2 MR MERIDETH: I mean, I would like to have</p> <p>3 an understanding, while we are here, and perhaps some</p> <p>4 guidance, as to the relevant time periods We,</p> <p>5 obviously, believe that the discovery requests and the</p> <p>6 questions that we asked the 30(b)(6) witness, Mr Kim,</p> <p>7 were appropriate going back at least until 1996, when</p> <p>8 this Lucky Gold Star product was manufactured</p> <p>9 If you have a disagreement with that, we</p> <p>10 ought to know about that</p> <p>11 MR CHRISTENSON: Our feeling is, Your</p> <p>12 Honor, that the relevant time period would be -- the</p> <p>13 most relevant time period would be the time period that</p> <p>14 is before 1999 because that could potentially relate to</p> <p>15 the validity argument that the defendants are making</p> <p>16 SPECIAL MASTER POPPITI: So you disagree</p> <p>17 with Mr Merideth in terms of prior to 19 -- you said</p> <p>18 1996, you said before 1999 1996 is --</p> <p>19 MR CHRISTENSON: I don't know specifically,</p> <p>20 Your Honor, when certain products were made or what,</p> <p>21 specifically, Mr Merideth had in mind, so I can't say,</p> <p>22 for a particular product, what the particular time</p> <p>23 period would be, but I think the early time period is</p> <p>24 the relevant time period</p>
Page 43	Page 45
<p>1 certainly with respect to the first category, why don't</p> <p>2 you talk about the two issues you just raised and see if</p> <p>3 you can either come to some resolution or if I can</p> <p>4 provide some guidance?</p> <p>5 MR CHRISTENSON: Are you suggesting we have</p> <p>6 a meet and confer, Your Honor? I am not sure what you</p> <p>7 would like me to do</p> <p>8 SPECIAL MASTER POPPITI: I am suggesting if</p> <p>9 you would like to do that now, please do If you think</p> <p>10 it would be better use of everyone's time to do it in a</p> <p>11 meet and confer, that's fine, but I want to be able to</p> <p>12 resolve these issues now By "now," I mean today,</p> <p>13 tomorrow, Monday kind of thing</p> <p>14 MR CHRISTENSON: What I would prefer to do,</p> <p>15 Your Honor, would be to go through the four general</p> <p>16 subject areas since I haven't heard what they are yet</p> <p>17 I assume I know generally what they are because they</p> <p>18 probably match up to the topics that were proposed, but</p> <p>19 if we could go through the general topics and see to</p> <p>20 what extent we can agree on those If we don't agree,</p> <p>21 maybe you could tell us what the answer is</p> <p>22 SPECIAL MASTER POPPITI: Okay</p> <p>23 MR CHRISTENSON: And then maybe tomorrow we</p> <p>24 can have a meet and confer on those subject matters that</p>	<p>1 SPECIAL MASTER POPPITI: Mr Merideth</p> <p>2 MR MERIDETH: Yes Well, the one product</p> <p>3 that they have disclosed is the Lucky Gold Star product</p> <p>4 that is attached to one of our letters to Your Honor,</p> <p>5 one of the supplemental submissions</p> <p>6 SPECIAL MASTER POPPITI: I am aware of it</p> <p>7 MR MERIDETH: Which is the 1996 Lucky Gold</p> <p>8 Star product</p> <p>9 SPECIAL MASTER POPPITI: Right</p> <p>10 MR MERIDETH: We had asked Mr Kim about</p> <p>11 the previous products that it used rear mounting</p> <p>12 fastening elements, and he claims that there were none</p> <p>13 We certainly believe now that a 30(b)(6) witness ought</p> <p>14 to be available to testify who has knowledge of the</p> <p>15 fastening methods, particularly rear mounting elements,</p> <p>16 that existed on products prior to 1999, going back at</p> <p>17 least until 1996, and if there were rear mounted</p> <p>18 products before then, those products</p> <p>19 I will be blunt --</p> <p>20 SPECIAL MASTER POPPITI: Based on the</p> <p>21 production of the Lucky Gold Star document, I am</p> <p>22 satisfied that it should go back to 1996, and if there</p> <p>23 are other product before 1996, it should go back to</p> <p>24 identify that as well, to discuss that as well So that</p>

Hearing

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 gives you the back end</p> <p>2 MS ROMAN: Your Honor, I will speak to the</p> <p>3 front end, if I might, briefly</p> <p>4 SPECIAL MASTER POPPITI: Please</p> <p>5 MS ROMAN: The reason that the product's</p> <p>6 post filing of the U S application are relevant and</p> <p>7 that that location of the fastening elements on those</p> <p>8 products are relevant goes to the issues of commercial</p> <p>9 success and the calculation of the proper reasonable</p> <p>10 royalty</p> <p>11 They are very specific factors, the impact</p> <p>12 on the market, the value on the product, the demand for</p> <p>13 products that have fasteners used for marketing and</p> <p>14 particular purposes, and one argument that's been made</p> <p>15 in previous cases by LPL is whether or not there is a</p> <p>16 cost savings associated with having a fastening element</p> <p>17 in a certain location or a mounting element in a certain</p> <p>18 location So, we need to inquire into the scope and</p> <p>19 structure and function and location of the fastening</p> <p>20 elements on those post prior art products for purposes</p> <p>21 of commercial success and damages</p> <p>22 SPECIAL MASTER POPPITI: Mr Christenson</p> <p>23 MR CHRISTENSON: Your Honor, I think this</p> <p>24 really, you know, brings to the floor some of the</p>	<p>1 at the deposition, what would happen, I suspect, is they</p> <p>2 would ask about two or three products that they really</p> <p>3 think are relevant</p> <p>4 And, so, it really doesn't make sense to me</p> <p>5 to have a witness prepared on all the topics, and I</p> <p>6 think it's inconsistent with their prior position that</p> <p>7 they shouldn't have to do that</p> <p>8 SPECIAL MASTER POPPITI: Well, whether it's</p> <p>9 -- and maybe what we are talking about is the rule of</p> <p>10 thumb that you just identified, this is not in the</p> <p>11 nature of a ruling, my question is: Can't you, for</p> <p>12 purposes of noticing and for purposes of letting the</p> <p>13 witness be prepared, narrow the scope, and if you can't,</p> <p>14 why can't you?</p> <p>15 MS ROMAN: Your Honor, this might be one of</p> <p>16 those issues where we can look into it further over the</p> <p>17 course of the evening, but, certainly, one reason that</p> <p>18 it's difficult to narrow the scope to specific</p> <p>19 identified products, Your Honor might recall that when</p> <p>20 we dealt with the issue of trying to reduce the burden</p> <p>21 to LPL for the production of the subsequent documents</p> <p>22 for the post prior art products, we tried to come up</p> <p>23 with a scheme that gave us the top 10 percent selling</p> <p>24 products as identified by side mounting, front mounting,</p>
Page 47	Page 49
<p>1 concerns that we have about the topics, and when we</p> <p>2 talked about commercial success and damages, those are</p> <p>3 topics that were covered at length in the previous</p> <p>4 depositions I don't think there is anything in these</p> <p>5 recently produced documents that changes anything in</p> <p>6 that landscape</p> <p>7 I think it's important to note, Your Honor,</p> <p>8 that when we were speaking to depose ViewSonic,</p> <p>9 ViewSonic took the position, in resisting testimony,</p> <p>10 that they had some 200 products, it would be burdensome</p> <p>11 to prepare a witness to testify about all those</p> <p>12 products, and the products were largely not relevant,</p> <p>13 especially if they were not accused</p> <p>14 And now they are turning around and making</p> <p>15 the complete opposite argument, that everything is</p> <p>16 relevant because maybe it goes to commercial success</p> <p>17 Well, if it goes to commercial success, they are going</p> <p>18 to have to make an argument that that practices the</p> <p>19 invention And I don't think that -- there are very few</p> <p>20 products so far that they have identified that they are</p> <p>21 even going to argue practice the invention, yet, they</p> <p>22 want all 100 plus products to be the subject of</p> <p>23 potential testimony, and we would have to prepare a</p> <p>24 witness on all of those products, Your Honor And then,</p>	<p>1 or rear mounting</p> <p>2 SPECIAL MASTER POPPITI: Yes, I remember</p> <p>3 MS ROMAN: LPL was unable to accept that</p> <p>4 offer of compromise because they represented that they</p> <p>5 don't categorize their products that way and they would</p> <p>6 have no way of knowing whether a particular module is</p> <p>7 front or side or rear mounted I think they might have</p> <p>8 even gone so far as to represent that it was because</p> <p>9 they don't dictate the mounting but their customers do</p> <p>10 it</p> <p>11 So, the difficulty we have is we have been</p> <p>12 produced -- instead, what we ended up with is a</p> <p>13 production of the top 10 percent selling products,</p> <p>14 period, and us going through and trying to ascertain</p> <p>15 where fastening elements are located based on that</p> <p>16 production It certainly doesn't mean that that is the</p> <p>17 full scope of products that have fasteners that are used</p> <p>18 for rear mounting or fasteners that are used for side</p> <p>19 mounting or for front mounting And to the extent that</p> <p>20 there are products that were top sellers that have rear</p> <p>21 mounting, certainly, that does go to commercial success</p> <p>22 but it might not have been swept into the production</p> <p>23 It might have been a top seller for rear mounting but it</p> <p>24 might have not fallen within the scope of the top 10</p>

Hearing

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 percent of best selling products, period</p> <p>2 For our expert to do a proper comparison of</p> <p>3 whether a product has achieved commercial success, they</p> <p>4 need to be able to compare the sales of the products</p> <p>5 that have fasteners on the back to sales of products</p> <p>6 that have fasteners on the side or the front</p> <p>7 SPECIAL MASTER POPPITI: You would agree,</p> <p>8 would you not, that -- and I understand what you just</p> <p>9 said and what you just said makes sense to me,</p> <p>10 Mr. Christenson, it does; at the same time, you, at some</p> <p>11 point in approaching the day of deposition, and this is</p> <p>12 really something that would be in the nature of forging</p> <p>13 a different agreement, you will have made some judgment</p> <p>14 as to which of the products you will be questioning the</p> <p>15 witness about; is that fair?</p> <p>16 MS ROMAN: I think it's fair given the pure</p> <p>17 nature of time restrictions, Your Honor, yeah</p> <p>18 SPECIAL MASTER POPPITI: So, is it not fair</p> <p>19 to consider establishing a date by which you will have</p> <p>20 made that determination in a time frame that's</p> <p>21 sufficient to say to LPL, This is what we are going to</p> <p>22 be asking about; we agree to limit ourselves to this;</p> <p>23 prepare your witness?</p> <p>24 MS ROMAN: Your Honor, I certainly would be</p>	<p>1 focus on That's too late for it to serve any value in</p> <p>2 terms of having a witness focused on the production that</p> <p>3 you are going to be focused on</p> <p>4 And what I am hoping to look for is some</p> <p>5 point in time, clearly, before the deposition, when you</p> <p>6 can identify those that you will be focused on Perhaps</p> <p>7 there should be some understanding that if, during the</p> <p>8 course of further investigation, you are able to</p> <p>9 identify others, that it would be a good faith</p> <p>10 representation you couldn't do it before, and you will</p> <p>11 give that information to LPL in advance of the</p> <p>12 deposition?</p> <p>13 MS ROMAN: Yes, Your Honor That would</p> <p>14 actually make it a little bit easier to accomplish</p> <p>15 SPECIAL MASTER POPPITI: Mr. Christenson,</p> <p>16 does that make any sense just in terms of seeing if</p> <p>17 there is some path of identification before so you can</p> <p>18 prep the witness?</p> <p>19 MR. CHRISTENSON: Your Honor, certainly, I</p> <p>20 think that makes a good deal of sense because the</p> <p>21 alternative is we end up, you know, trying to prepare</p> <p>22 someone on information that isn't going to be of any</p> <p>23 interest to anyone, and then that's going to minimize</p> <p>24 the time we have to prepare for things that they may be</p>
Page 51	Page 53
<p>1 happy to look into that over the evening</p> <p>2 The only difficulty I have with agreeing to</p> <p>3 do it specifically is that I haven't, unfortunately,</p> <p>4 been the one reviewing the recent document production</p> <p>5 I am just not certain if the quality of the documents</p> <p>6 that have been produced allow us to identify model</p> <p>7 numbers I know that's been an issue with some of the</p> <p>8 documents, and, so, to give you a specific answer to</p> <p>9 that question is a little difficult</p> <p>10 The other concern I have is that I guess</p> <p>11 what reaching that agreement would require us to do is</p> <p>12 to agree that we are going to forego discovery beyond</p> <p>13 what we have been able to ascertain from the documents</p> <p>14 that have been produced which have already, admittedly,</p> <p>15 been limited to the top 10 percent selling products</p> <p>16 regardless of where the mounting elements happen to be</p> <p>17 located</p> <p>18 And, so, I guess that's something that I</p> <p>19 would just, I'd ask Your Honor's permission to look</p> <p>20 into?</p> <p>21 SPECIAL MASTER POPPITI: Absolutely What</p> <p>22 am doing, by virtue of making this suggestion, is,</p> <p>23 certainly, the hour before you go into the deposition,</p> <p>24 you are going to know which products you are going to</p>	<p>1 more interested in I think it's mutually beneficial to</p> <p>2 understand what, you know, what should this deposition</p> <p>3 really be about And if we know that, we can better</p> <p>4 prepare a witness</p> <p>5 SPECIAL MASTER POPPITI: If you are both</p> <p>6 willing to do it against, you know, within that</p> <p>7 framework, understanding that it may be important to</p> <p>8 build in a safety net, if you will, knowing that safety</p> <p>9 net is not for the purpose of sandbagging, I am hoping</p> <p>10 you can do that</p> <p>11 MS ROMAN: Yes, Your Honor I can let</p> <p>12 Mr. Christenson know by tomorrow morning how soon I</p> <p>13 could get him the list of the post 1999 products that</p> <p>14 would be the focus for them to start preparing based on</p> <p>15 the information that we have available to us now</p> <p>16 SPECIAL MASTER POPPITI: Okay</p> <p>17 MS ROMAN: And, hopefully, I will be able</p> <p>18 to get the list of products to him shortly thereafter</p> <p>19 It's just a matter of coordinating with the other</p> <p>20 attorneys</p> <p>21 SPECIAL MASTER POPPITI: Okay That's good</p> <p>22 Should we move onto the next issue?</p> <p>23 MS ROMAN: Yes The next area of the</p> <p>24 deposition issue?</p>

Hearing

15 (Pages 54 to 57)

Page 54	Page 56
<p>1 SPECIAL MASTER POPPITI: Yes, please</p> <p>2 MS ROMAN: That relates to the statements</p> <p>3 that LPL or its patent agents made to the patent office</p> <p>4 regarding the existence of fasteners on the back of the</p> <p>5 LCD devices. And this is, for purposes of the</p> <p>6 deposition topics that have been submitted, it goes to</p> <p>7 topic seven</p> <p>8 SPECIAL MASTER POPPITI: Let me just -- just</p> <p>9 give me one second, please. I have certainly noted that</p> <p>10 for purposes of your seeing how I view that, that, if</p> <p>11 you will, that's a new topic; fair?</p> <p>12 MS ROMAN: I am sorry, Your Honor, "new" as</p> <p>13 in it was not part of any deposition notices? Because I</p> <p>14 don't think that's accurate</p> <p>15 SPECIAL MASTER POPPITI: That's not</p> <p>16 accurate</p> <p>17 MS ROMAN: I would say that the topic, as</p> <p>18 it's been written there, I can understand LPL seeing it</p> <p>19 as potentially getting information that was part of the</p> <p>20 previous deposition</p> <p>21 SPECIAL MASTER POPPITI: Counsel, no, I was</p> <p>22 mistaken. I was looking at another topic</p> <p>23 MS ROMAN: Okay</p> <p>24 SPECIAL MASTER POPPITI: Thank you</p>	<p>1 that</p> <p>2 Let's talk about that topic, then, from</p> <p>3 LPL's perspective</p> <p>4 MR CHRISTENSON: Your Honor, the broad</p> <p>5 issue, as I understood it, was, quote, statements by LPL</p> <p>6 to the Patent Office, end quote, and then there is a</p> <p>7 separate issue, I think, which are their specific topics</p> <p>8 and subtopics that would have language that fall under</p> <p>9 that broad category</p> <p>10 With respect to broad category, statements</p> <p>11 by LPL to the Patent Office, as Miss Roman predicted,</p> <p>12 our position is that, clearly, that was the subject of</p> <p>13 their original depositions, and this is a classic</p> <p>14 example, in our view, of where they are simply reopening</p> <p>15 discovery on closed issues</p> <p>16 I mean, there is no question that they had</p> <p>17 the opportunity, and I think they exercised, at least in</p> <p>18 part, the opportunity to go through with LPL's witnesses</p> <p>19 before, things about -- things related to what were</p> <p>20 submitted to the Patent Office during the prosecution of</p> <p>21 the patents-in-suit. And some of the subtopics referred</p> <p>22 to specific documents; for example, there is a reference</p> <p>23 to an amendment filed in January of 2001. You know, I</p> <p>24 mean, that amendment is what it is. They have had it</p>
Page 55	Page 57
<p>1 MS ROMAN: So, what we are trying to do</p> <p>2 with this scope of the deposition issue is to say, We</p> <p>3 are not looking to go back over information that's</p> <p>4 already been gleaned from the previous deposition about</p> <p>5 the prosecution of the patent, but, at least from</p> <p>6 ViewSonic's view, there is this issue of statements made</p> <p>7 to the Patent Office regarding the existence or the</p> <p>8 non-existence of fasteners on the back of LCD devices</p> <p>9 that were known to LPL, particularly its own modules,</p> <p>10 and we have discovered this information about the</p> <p>11 fasteners being on the backs of these devices in light</p> <p>12 of this recent production, which is what leads to the</p> <p>13 need to inquire into that subject area</p> <p>14 And I believe, and I will let Tatung speak</p> <p>15 to this issue, but I believe it might also relate to a</p> <p>16 couple of the topic issues that they have proposed</p> <p>17 I am not sure if my overarching issue is</p> <p>18 broad enough to sweep that in, but that's --</p> <p>19 MR MERIDETH: I believe it is</p> <p>20 SPECIAL MASTER POPPITI: It looks like it</p> <p>21 would be</p> <p>22 MS HO: And that would include on topics</p> <p>23 pertaining to the NEC litigation</p> <p>24 SPECIAL MASTER POPPITI: Right. I respect</p>	<p>1 all along. They had the opportunity to ask about it</p> <p>2 with the witness. If they didn't do that, that was for</p> <p>3 reasons they decided, but I don't see a need here or</p> <p>4 connection here to the recent document production</p> <p>5 I think this is a -- at least if you look at</p> <p>6 the way it's worded, it's just going right back to the</p> <p>7 prior topics, and that's all the discovery that should</p> <p>8 be closed</p> <p>9 SPECIAL MASTER POPPITI: Let me make this</p> <p>10 observation and see if this is helpful: The fact that</p> <p>11 it is, or the fact that you can draw a line to each word</p> <p>12 in the prior notices doesn't, at first blush, bother me</p> <p>13 if what you are doing is saying, With respect to those</p> <p>14 topics or subtopics, I am going to be questioning the</p> <p>15 witness with respect to those topics and subtopics that</p> <p>16 have been covered before as it relates, as each one of</p> <p>17 them relates to new production</p> <p>18 So, if it relates to the new production, I</p> <p>19 am not troubled by the fact that it's the same topic</p> <p>20 area. If it relates to the new production and if it</p> <p>21 is -- and I don't know whether it is because I haven't</p> <p>22 heard you say it this way -- if it's meant to say you</p> <p>23 said this before in light of the new production, what</p> <p>24 are you saying?</p>

Hearing

16 (Pages 58 to 61)

Page 58	Page 60
<p>1 MS ROMAN: Your Honor, I think that that</p> <p>2 does capture what I was trying to say when I offered the</p> <p>3 scope as statements made regarding the existence of</p> <p>4 fasteners on the back of LCD devices</p> <p>5 If, in light of the new production --</p> <p>6 SPECIAL MASTER POPPITI: Let me approach it</p> <p>7 this way I am sorry I just interrupted you</p> <p>8 MS ROMAN: That's quite all right</p> <p>9 SPECIAL MASTER POPPITI: Did you want to</p> <p>10 finish?</p> <p>11 MS ROMAN: You have heard the point</p> <p>12 already.</p> <p>13 SPECIAL MASTER POPPITI: It seems to me if</p> <p>14 you had the deponent in the chair and all of this</p> <p>15 production was at your hands at the time you first had</p> <p>16 the deponent in the chair and you discussed with the</p> <p>17 deponent the process of the prosecution history, and you</p> <p>18 got through all of that, you can certainly, I would</p> <p>19 think you would agree with me, reach into your files,</p> <p>20 pull out a document, and begin to question the witness</p> <p>21 with respect to that particular document in light of</p> <p>22 what was said about prosecution history; does anyone</p> <p>23 disagree with that?</p> <p>24 MR CHRISTENSON: Your Honor, are you</p>	<p>1 deposition, usually an objection on the grounds of</p> <p>2 relevancy, you just object and you move on for the</p> <p>3 record</p> <p>4 I think, in the context of this deposition,</p> <p>5 it's going to be important, if you agree with this</p> <p>6 approach, that I be available for a telephone call if,</p> <p>7 in fact, the deposition strays from the new production</p> <p>8 as it relates to the topics that were identified before</p> <p>9 MR CHRISTENSON: Yes, Your Honor I think</p> <p>10 that's going to be very important I think that's</p> <p>11 appropriate so that we have the right focus</p> <p>12 SPECIAL MASTER POPPITI: Ms Roman, do you</p> <p>13 agree or disagree?</p> <p>14 MS ROMAN: Absolutely, Your Honor I agree</p> <p>15 with that position</p> <p>16 SPECIAL MASTER POPPITI: And in light of</p> <p>17 that, is there agreement, then, with respect to the</p> <p>18 spirit of the deposition that we just talked about?</p> <p>19 MR. MERIDETH: Your Honor, there is only one</p> <p>20 other point, just to be crystal clear, it not only is</p> <p>21 what was represented to the Patent Office but also what</p> <p>22 was not represented to the Patent Office in light of LPL</p> <p>23 products in particular</p> <p>24 SPECIAL MASTER POPPITI: I understand that</p>
Page 59	Page 61
<p>1 referring to a recently produced document?</p> <p>2 SPECIAL MASTER POPPITI: I am suggesting</p> <p>3 that at the time that we are doing this, you got</p> <p>4 everything and you have all the production with you in</p> <p>5 the room, you have walked the witness through topics</p> <p>6 relating to prosecution history process of the</p> <p>7 patents-in-suit, and then you are going to want to talk</p> <p>8 to the deponent about a specific product, a specific</p> <p>9 document; you can do that; right?</p> <p>10 MR CHRISTENSON: Absolutely, Your Honor</p> <p>11 If there is a relevant document or relevant question,</p> <p>12 absolutely</p> <p>13 SPECIAL MASTER POPPITI: And my point is:</p> <p>14 The only difference is here, the document that you</p> <p>15 didn't have at the desk when you could have done that,</p> <p>16 you do have it now So long as the questions relate to</p> <p>17 that new document, I think it's permissible</p> <p>18 MR CHRISTENSON: And Your Honor --</p> <p>19 SPECIAL MASTER POPPITI: If you are going to</p> <p>20 go back and redo the prosecution history in a vacuum, if</p> <p>21 you will, or if are you are going to go back and redo</p> <p>22 the deposition because it wasn't done right the first</p> <p>23 time, then that's not proper And I realize, and I</p> <p>24 think I said this when we were talking about the Rudich</p>	<p>1 And I would expect Mr Christenson would understand that</p> <p>2 as well</p> <p>3 MR CHRISTENSON: Yes, Your Honor</p> <p>4 Obviously, we would have -- depending on the question,</p> <p>5 if it calls, for example, for some kind of privilege, we</p> <p>6 would have whatever objections would apply, we would</p> <p>7 raise those, but I understand the subject matter and I</p> <p>8 think we can accept that</p> <p>9 SPECIAL MASTER POPPITI: Is that sufficient</p> <p>10 to move on?</p> <p>11 MS ROMAN: I think, Your Honor, yes It's</p> <p>12 sufficient for ViewSonic</p> <p>13 SPECIAL MASTER POPPITI: Okay</p> <p>14 MR CHRISTENSON: The only other question we</p> <p>15 didn't address, Your Honor, there are, I think, a couple</p> <p>16 of subtopics that Tatung has proposed that I am not sure</p> <p>17 if they are saying those subtopics come under this --</p> <p>18 SPECIAL MASTER POPPITI: I think H and I;</p> <p>19 correct?</p> <p>20 MS ROMAN: Yes, Your Honor They might</p> <p>21 fall under the umbrella of my final two issues</p> <p>22 SPECIAL MASTER POPPITI: Do you want to tell</p> <p>23 us what those are, then?</p> <p>24 MS ROMAN: And then we can see, yes</p>

Hearing

17 (Pages 62 to 65)

Page 62	Page 64
<p>1 The next issue relates to the facts</p> <p>2 concerning the sales, marketing, advertising of LPL's</p> <p>3 LCD modules for the prior art products. It's important</p> <p>4 for showing that the products qualify as prior art,</p> <p>5 whether there were instructions provided to customers or</p> <p>6 requests made by customers for mounting those products,</p> <p>7 whether any features were touted or advertised to</p> <p>8 customers as key features or not advertised to</p> <p>9 customers. That requires, also, inquiring into the</p> <p>10 finished products into which the LPL modules were</p> <p>11 mounted so it can be determined how they were actually</p> <p>12 mounted.</p> <p>13 And then, for the later products, the</p> <p>14 inquiries are similar, but the reasons, as we see it,</p> <p>15 would be that these sales relate to evaluating, again,</p> <p>16 the commercial success, and, again, trying to ascertain</p> <p>17 whether that commercial success is due to the mounting</p> <p>18 structure of the products.</p> <p>19 I believe this hits topics three, four, and</p> <p>20 five.</p> <p>21 MR. MERIDETH: I would add to that LG</p> <p>22 products, during the period of time that LPL was a</p> <p>23 division of LGE, which covers the 1996 through 19 --</p> <p>24 through the fall of 1999 period, but I believe it to be</p>	<p>1 day one or some subset of that which would at least</p> <p>2 number 100 or more products.</p> <p>3 In either event, Your Honor, the topics, on</p> <p>4 their face, are extraordinarily broad, and we cited some</p> <p>5 examples of that in our papers. They don't focus on</p> <p>6 relevant features of the products. They are very broad</p> <p>7 brushed and open up a witness or a deponent to questions</p> <p>8 that go to any aspects, really, of the products over</p> <p>9 this entire time period of more than 10 years.</p> <p>10 So, it's not relevant to anything, it's not</p> <p>11 reasonably calculated to lead to admissible evidence,</p> <p>12 and it's burdensome.</p> <p>13 SPECIAL MASTER POPPITI: Remember what we</p> <p>14 are doing. I am not so much looking at the precise</p> <p>15 language of these topics as I am about the categories.</p> <p>16 MR. CHRISTENSON: I apologize, Your Honor.</p> <p>17 I was getting a little bit more into the specifics.</p> <p>18 With respect to the category, itself, we</p> <p>19 have produced sales information, sales summaries that go</p> <p>20 by product by time period for the time period that has</p> <p>21 been requested in this case.</p> <p>22 SPECIAL MASTER POPPITI: Right.</p> <p>23 MR. CHRISTENSON: And that's really, you</p> <p>24 know, the information that exists. If there are</p>
Page 63	Page 65
<p>1 the end of the year 1999 period, so that we don't have</p> <p>2 this problem, for example, with regard to the Lucky Gold</p> <p>3 Star product. Oh, we don't have any sales information</p> <p>4 about that because that's an LG product, when, in fact,</p> <p>5 LPL was the LG division that was responsible for that</p> <p>6 product during that time.</p> <p>7 MR. CHRISTENSON: That's not correct, Your</p> <p>8 Honor. And, first of all, with respect to what</p> <p>9 Mr. Merideth just said, that's a topic that's nowhere in</p> <p>10 any of the submissions before you. So he is now</p> <p>11 introducing a new topic that's never been discussed with</p> <p>12 us, from our point of view, and I object to even</p> <p>13 discussing that topic.</p> <p>14 We have information --</p> <p>15 SPECIAL MASTER POPPITI: Let's get back on</p> <p>16 track. Let's focus on precisely what Miss Roman</p> <p>17 proposed. Mr. Merideth, I don't see that discussion in</p> <p>18 the topics. We can discuss that in a moment, but let's</p> <p>19 just deal with the overarching description that</p> <p>20 Miss Roman just provided.</p> <p>21 MR. CHRISTENSON: Your Honor, in response to</p> <p>22 that, the category being generally still for marketing</p> <p>23 and advertising of all of LPL's products, it's not clear</p> <p>24 to me whether we are talking about all products since</p>	<p>1 questions about those recently produced summaries, then</p> <p>2 I think that would be a relevant scope of inquiry. But</p> <p>3 to go back into all the sales summaries that we have</p> <p>4 previously produced, we had a witness, Your Honor, who</p> <p>5 was a high ranking executive here for two days from</p> <p>6 Korea, Mr. Kim, who was very well prepared on all these</p> <p>7 issues and testified for two days on all these issues.</p> <p>8 And if they want to talk about sales summaries that we</p> <p>9 have produced supplementally, then I think that would be</p> <p>10 relevant. But it's not clear to me exactly what they</p> <p>11 are saying with respect to this topic.</p> <p>12 MS. ROMAN: Your Honor, perhaps I can try</p> <p>13 and shed a little bit more light on it.</p> <p>14 With respect to the later products as</p> <p>15 opposed to the prior art products, because I believe</p> <p>16 that's the products for which Mr. Christenson is</p> <p>17 referring to when he says that they have produced sales</p> <p>18 summaries, as I understand it, the sales summaries, we</p> <p>19 have sales summaries that identify the product and then</p> <p>20 we have that enormous document that Your Honor had the</p> <p>21 pleasure of having provided to him, which was, I guess,</p> <p>22 referred to as the bill of materials document.</p> <p>23 SPECIAL MASTER POPPITI: I have had it</p> <p>24 bronzed.</p>

Hearing

18 (Pages 66 to 69)

Page 66	Page 68
<p>1 MR. CHRISTENSON: Makes a good gift.</p> <p>2 MS ROMAN: Good paper weight certainly in</p> <p>3 that form</p> <p>4 As I understand it, though, the bill of</p> <p>5 materials and those sales summaries, together, didn't</p> <p>6 provide us the information that, in light of recent</p> <p>7 document productions or the information we might obtain</p> <p>8 through the deposition about the location of the certain</p> <p>9 fastening elements, that they are able to tie together</p> <p>10 the costs of the relevant components, such as the</p> <p>11 fastening element, as compared to the cost of the module</p> <p>12 overall or the cost associated with locating a fastening</p> <p>13 element on the back as opposed to the front or as</p> <p>14 opposed to the side</p> <p>15 The documents that were produced at that</p> <p>16 time, because we didn't have the technical documents and</p> <p>17 information, didn't allow us to dive into those</p> <p>18 inquiries</p> <p>19 SPECIAL MASTER POPPITI: Yeah</p> <p>20 MS ROMAN: So, to the extent that -- we are</p> <p>21 certainly not going to go back over sales summaries and</p> <p>22 say, Okay, now, you produced this sales summary seven</p> <p>23 months ago and I just want to go through again and make</p> <p>24 sure that this product was sold on this date. We have</p>	<p>1 more or less, in the same boat that we were just in 10</p> <p>2 minutes, 15 minutes ago when we were talking about how</p> <p>3 we can identify the scope of what is going to be</p> <p>4 discussed during the course of this deposition; are we</p> <p>5 not back at the same point?</p> <p>6 MR. CHRISTENSON: We are, Your Honor</p> <p>7 SPECIAL MASTER POPPITI: Ms. Roman?</p> <p>8 MS ROMAN: Well, Your Honor, I certainly</p> <p>9 think that the scope is threaded out through, perhaps,</p> <p>10 the first overarching issue that we discussed. But I</p> <p>11 would be happy to follow-up first thing tomorrow morning</p> <p>12 just to make sure we are clear on it</p> <p>13 SPECIAL MASTER POPPITI: It's going to serve</p> <p>14 no one's purpose at all to contact me at some point when</p> <p>15 we have got a 30(b)(6) in the chair and say, He is not</p> <p>16 prepared to answer these questions. Where is that going</p> <p>17 to put us then? I understand where it could put us</p> <p>18 The question could then become, Well, let's get him</p> <p>19 prepared or let's find somebody else that is prepared</p> <p>20 because it is an appropriate subject under these topics</p> <p>21 and subtopics</p> <p>22 At this stage of where we are, I don't think</p> <p>23 that makes any sense to anyone</p> <p>24 MS ROMAN: No, Your Honor, I would agree.</p>
Page 67	Page 69
<p>1 that information and we certainly don't have the time</p> <p>2 right now to waste going back over that kind of</p> <p>3 information.</p> <p>4 It would be information that we weren't able</p> <p>5 to ascertain about the sales of the products, the costs</p> <p>6 of certain features of the products, and whether or not</p> <p>7 any features that we can now point to in a document or</p> <p>8 inquire about during the deposition and say, Okay, did</p> <p>9 you advertise that feature as a specific feature that</p> <p>10 was important to the product? These are things that we</p> <p>11 weren't able to go into previously</p> <p>12 MR. CHRISTENSON: Your Honor, I really think</p> <p>13 that points out the difficulty here. We are talking</p> <p>14 about, Did you advertise an unspecified feature for --</p> <p>15 or even a particular specified feature for an</p> <p>16 unspecified product right now, which could be one of</p> <p>17 hundreds or thousands of products over a more than</p> <p>18 ten-year time period, and I don't know how to prepare a</p> <p>19 deponent to answer that without knowing, in advance,</p> <p>20 what we are talking about</p> <p>21 SPECIAL MASTER POPPITI: Well, are we not --</p> <p>22 I think, by virtue of what you just said, you don't</p> <p>23 disagree that the potential information is relevant? I</p> <p>24 didn't hear you say that. What you said was, We are,</p>	<p>1 And as I said, I think, at the beginning, this case is</p> <p>2 about the fastening elements and how the product is</p> <p>3 ultimately mounted</p> <p>4 SPECIAL MASTER POPPITI: Well, I don't</p> <p>5 disagree that what you have suggested, by virtue of this</p> <p>6 summary topic, if you will, it is relevant, but I really</p> <p>7 would urge you, before asking me to make any judgment</p> <p>8 about this, to see if there can't be a process that you</p> <p>9 agree to that will get you to the point of identifying</p> <p>10 what you really are going to be focused on in the</p> <p>11 deposition so that LPL can, in turn, prepare their</p> <p>12 witness</p> <p>13 If, ultimately, the witness that they</p> <p>14 prepare with respect to anything that you identify with</p> <p>15 some degree of specificity says, you know, I can't tell</p> <p>16 you that, we just don't do that, I have no idea, that's</p> <p>17 a little bit different from saying, I am just not</p> <p>18 prepared because it was too big and I only could bite</p> <p>19 off a certain piece of this</p> <p>20 Is that fair?</p> <p>21 MS ROMAN: Absolutely, Your Honor. And if</p> <p>22 I might have until tomorrow so that I could have a</p> <p>23 chance to speak with Tatung about it off-line as well so</p> <p>24 we can try and come to some other clarity on that, that</p>

Hearing

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 would be helpful</p> <p>2 SPECIAL MASTER POPPITI: Mr Merideth</p> <p>3 MR MERIDETH: Yes, that's fine, Your Honor</p> <p>4 Although I do still wish to be heard, and I don't want</p> <p>5 to interrupt, on this issue of LG Electronics because I</p> <p>6 don't want --</p> <p>7 SPECIAL MASTER POPPITI: We will get back to</p> <p>8 it, please</p> <p>9 Mr Christenson, do you agree with the</p> <p>10 approach?</p> <p>11 MR CHRISTENSON: Yes, Your Honor, I do</p> <p>12 SPECIAL MASTER POPPITI: Is it now time to</p> <p>13 talk about LG?</p> <p>14 MS ROMAN: I think it fits within the scope</p> <p>15 of this overarching issue, if at all, so I can reserve</p> <p>16 my last issue until we have heard on that</p> <p>17 SPECIAL MASTER POPPITI: Please,</p> <p>18 Mr Merideth</p> <p>19 MR MERIDETH: Your Honor, the underlying</p> <p>20 facts that were developed during the course of the</p> <p>21 30(b)(6) witnesses are that the invention, ostensibly,</p> <p>22 was made during a period of time that the inventors were</p> <p>23 employed by LG Electronics</p> <p>24 Later, before the U.S. application was</p>	<p>1 access to that information</p> <p>2 We were stumped, frankly, in the deposition</p> <p>3 of Mr Kim when he claimed he didn't have a lot of</p> <p>4 information about prior art, didn't know anything about</p> <p>5 it, never heard of rear mounting prior to the time that</p> <p>6 it was invented and so forth</p> <p>7 Now it appears, with this Lucky Gold Star</p> <p>8 module, that at least Mr Kim was ill informed We</p> <p>9 don't want to have a repetition of that situation And,</p> <p>10 so, I want to be clear that this topic includes, to the</p> <p>11 extent that LPL was a division of LGE prior to 19 -- the</p> <p>12 end of 1999, that we get that information</p> <p>13 SPECIAL MASTER POPPITI: Let me ask this</p> <p>14 question before hearing from Mr Christenson -- and I</p> <p>15 realize this is, perhaps this whole process that we have</p> <p>16 been engaged in for the latter part of working together</p> <p>17 today is a little bit unorthodox -- it seems to me what</p> <p>18 we are looking for is, if you will, like an open book</p> <p>19 exam in the sense that there has been a representation</p> <p>20 that the defendants will make a best effort to tee up</p> <p>21 those things that are going to be the subject of the</p> <p>22 actual deposition with a good faith understanding that</p> <p>23 there may be something added, that's added, by virtue of</p> <p>24 the preparation for the deposition even in the last</p>
Page 71	Page 73
<p>1 filed, LG Electronics' LCD division, if you will,</p> <p>2 including the unit, the business unit that employed the</p> <p>3 inventors, was sold or transferred to a corporation</p> <p>4 which was a wholly-owned entity by LGE and later became</p> <p>5 a joint venture with Phillips</p> <p>6 We have had produced in this case, as we had</p> <p>7 proceeded along, certain sales data and other</p> <p>8 information concerning products that were LG products</p> <p>9 during the time frames that we think are relevant</p> <p>10 beginning at least in 1996 Those documents, those</p> <p>11 sales records appear to be in the possession or at least</p> <p>12 accessible to LPL</p> <p>13 We also now have the Lucky Gold Star module</p> <p>14 which was manufactured in 1996 and which was in the</p> <p>15 possession of LPL at least in 1999 and 2000 when it was</p> <p>16 produced in the NEC case</p> <p>17 What I don't want to have, when we take</p> <p>18 these depositions, is a situation that the LPL 30(b)(6)</p> <p>19 witness says, Oh, I don't know anything about that</p> <p>20 product; that was an LGE product; we don't know anything</p> <p>21 about it</p> <p>22 In this case, we know that they knew of the</p> <p>23 recently produced Lucky Gold Star module and we do have</p> <p>24 sales data that relates to that, so we believe they have</p>	<p>1 days, that even that information is going to be provided</p> <p>2 to the witness</p> <p>3 Maybe it should simply work both ways And</p> <p>4 I understand what you have just said about the history</p> <p>5 of the entities It seems to me that either the witness</p> <p>6 is prepared or the witness simply says, We don't have</p> <p>7 that and I can't prepare on something we don't have</p> <p>8 And if a witness were to be saying that, either in</p> <p>9 advance of the deposition, because there is going to be</p> <p>10 some identification and perhaps there should be a</p> <p>11 response in the context of what we are doing here now,</p> <p>12 that representation means that it's not accessible And</p> <p>13 I would take that to mean it's just not there, whether</p> <p>14 you call it -- whether you call it LG, whether you call</p> <p>15 it anywhere along the chain of how that happened I</p> <p>16 didn't say that well I am getting tired</p> <p>17 Do I make any sense at all? If I don't,</p> <p>18 please tell me</p> <p>19 MR MERIDETH: No, you do, Your Honor</p> <p>20 The problem that we confronted with Mr Kim</p> <p>21 is that he, obviously -- although he was the 30(b)(6)</p> <p>22 witness, he, obviously, had less than perfect</p> <p>23 institutional knowledge because he did not have, or</p> <p>24 purported not to have any information concerning the</p>

Hearing

20 (Pages 74 to 77)

Page 74	Page 76
<p>1 Lucky Gold Star product, which, you know, LPL had, in 2 fact, produced in the NEC litigation sometime in 1999 or 3 2000</p> <p>4 SPECIAL MASTER POPPITI: We will get to that 5 in a moment</p> <p>6 MR MERIDETH: So, he was an imperfect 7 witness in that regard. We were, frankly, misled, and I 8 am not attributing any fault to anybody who was involved 9 if Mr. Kim was unaware of this particular product, but 10 somebody at LPL was aware of it because it was produced 11 in the NEC litigation</p> <p>12 SPECIAL MASTER POPPITI: And I think my 13 expectation is, given what has occurred in this case, 14 perhaps even framed by a discussion on the NEC 15 litigation, I anticipate that this witness is going to 16 have the breadth of the knowledge and history that you 17 anticipate</p> <p>18 And the best way, it seems to me, to do 19 that, is, if everyone is in a position to do what I have 20 suggested, you provide with as much specificity as you 21 can what's going to be discussed, there should be some 22 acknowledgment of that, and say, Yeah, we are ready to 23 go with this witness and the witness is prepared. 24 And if, during the course of the deposition,</p>	<p>1 knowledge needs to be investigated</p> <p>2 SPECIAL MASTER POPPITI: Right</p> <p>3 MR CHRISTENSON: At the same time, Your 4 Honor, I do want to make it clear that LG -- there is a 5 complex history there. LG is a company that has many 6 different divisions, and there is a separation between 7 LG and LPL, and some of the -- Mr. Merideth was, I am 8 not saying intentionally, but somewhat cryptic in terms 9 of what products he was referring to, and it's important 10 because if they want to ask questions about products 11 that were made as finished products, such as monitors, 12 that is not anything that LPL or LPL's predecessor 13 entity ever did. That's a separate product.</p> <p>14 So LPL has to know about its products and it 15 has to be including historical knowledge, but there are 16 other entities and divisions of products that are not 17 attributable to LPL.</p> <p>18 SPECIAL MASTER POPPITI: But, hopefully, by 19 the time that becomes an issue, it will be a non-issue 20 because you will have the best understanding as to what 21 products are going to be the subject of the deposition.</p> <p>22 MR CHRISTENSON: That's true</p> <p>23 SPECIAL MASTER POPPITI: Is there anything 24 else that needs to be said with respect to that,</p>
Page 75	Page 77
<p>1 there is a determination made that he isn't, we will 2 cross that bridge when we come to it</p> <p>3 MR MERIDETH: Okay</p> <p>4 SPECIAL MASTER POPPITI: Mr. Christenson</p> <p>5 MR CHRISTENSON: Yes, Your Honor. I think 6 that makes sense. And I understand what you are saying. 7 I don't agree with many of Mr. Merideth's comments, but 8 I don't think I need to respond to them directly.</p> <p>9 SPECIAL MASTER POPPITI: I understand they 10 need to be framed by the comments that you both make, 11 but I wasn't reacting, if you will, to what Mr. Merideth 12 was saying so much as accepting the fact that I 13 understand the nature of the entity and the entities as 14 they changed; I understand that the corporate history 15 and the knowledge has to flow right to the person in the 16 chair.</p> <p>17 MR CHRISTENSON: Yes, Your Honor. The only 18 comment I have on that, because it is important, is that 19 there is no question that a Rule 30(b)(6) witness is 20 testifying on behalf of the entity and not just based on 21 personal knowledge.</p> <p>22 SPECIAL MASTER POPPITI: Right</p> <p>23 MR CHRISTENSON: And, therefore, you know, 24 whatever is fairly within the scope of the company's</p>	<p>1 Mr. Merideth?</p> <p>2 MR MERIDETH: No, sir</p> <p>3 SPECIAL MASTER POPPITI: Next, please</p> <p>4 MS ROMAN: Yes, Your Honor. The last 5 issue, and, understandably, I believe, at the 6 deposition, it would be a short issue, relate to LPL's 7 document and product retention policies and procedures 8 and the efforts they made to locate the documents and 9 products that they have produced in response to -- that 10 they have recently produced.</p> <p>11 Just to follow-up on that, because, for 12 example, we have talked briefly, earlier today, about 13 the representations that were made about the lack of 14 categorization of products or the lack of ability to 15 identify products based on mounting features, so it's -- 16 we'd like to just certainly follow-up and make sure we 17 understand how documents -- how these documents were 18 maintained, how they were located and searched for to 19 assure that we have covered everything and received 20 everything that properly falls within the scope of the 21 request.</p> <p>22 And, as I said, I think that that would 23 probably be a very short issue at the deposition, but, 24 nonetheless, one that we'd like to make sure we close</p>

Hearing

21 (Pages 78 to 81)

Page 78	Page 80
<p>1 the door on</p> <p>2 SPECIAL MASTER POPPITI: Mr Christenson</p> <p>3 MR CHRISTENSON: Yes, Your Honor I think,</p> <p>4 you know, given the guidance and your earlier comments,</p> <p>5 which I assume apply here as well, I don't think there</p> <p>6 is going to be a dispute on this I understand you to</p> <p>7 be saying, you know, we focused on new issues, we</p> <p>8 focused on the recently produced documents, I think</p> <p>9 that's ViewSonic's intent, from what I just heard I</p> <p>10 don't think they are going to now seek to go back and do</p> <p>11 what was or could have been done earlier</p> <p>12 So, in that -- assuming that to be the case,</p> <p>13 then that's fine</p> <p>14 SPECIAL MASTER POPPITI: Ms Roman</p> <p>15 MS ROMAN: Yes, that's correct, Your Honor</p> <p>16 SPECIAL MASTER POPPITI: Okay</p> <p>17 MS ROMAN: That's the end of my spirit of</p> <p>18 the deposition issues</p> <p>19 SPECIAL MASTER POPPITI: Thank you</p> <p>20 MR CHRISTENSON: Your Honor, there was one</p> <p>21 issue that I am not sure we need to address right now,</p> <p>22 but I just want to make sure no one thinks it was</p> <p>23 resolved, and if it was, I missed it, and, that is,</p> <p>24 whether the -- the two subtopics that Tatung raised</p>	<p>1 it was not produced until just three weeks ago, and</p> <p>2 whether and why not, with respect to its disclosure to</p> <p>3 the Patent Office since it appears to have been</p> <p>4 available to LPL during the crucial time period, namely,</p> <p>5 1999 and 2000 And we think that that is a topic that</p> <p>6 is very important with respect to establishing intent</p> <p>7 with regard to inequitable conduct, among other things,</p> <p>8 and I think it does fall within the general subject</p> <p>9 matters of '03 and four that Ms. Roman has raised, but</p> <p>10 we don't want -- but saying that's covered by those</p> <p>11 subjects, when, apparently, LPL disagrees, is something</p> <p>12 that we need to vet now</p> <p>13 SPECIAL MASTER POPPITI: I agree we should</p> <p>14 vet it now, even if I consider it a subpart of what we</p> <p>15 have discussed</p> <p>16 MR CHRISTENSON: Your Honor, as I</p> <p>17 understood, from prior meet and confers on this issue,</p> <p>18 the issue that -- the issue that Tatung wants to explore</p> <p>19 is something they feel relates to inequitable conduct,</p> <p>20 and they want to know about what was done in the NEC</p> <p>21 case with respect to collecting and producing documents</p> <p>22 and who was involved in that effort, and it's not clear</p> <p>23 to me how that could relate to the prosecution of the</p> <p>24 patents-in-suit here, but, as I understand, that's the</p>
Page 79	Page 81
<p>1 regarding the NEC litigation</p> <p>2 SPECIAL MASTER POPPITI: I am about to do</p> <p>3 that</p> <p>4 MR CHRISTENSON: Okay</p> <p>5 MS ROMAN: That actually might fall within</p> <p>6 that last issue because these documents that relate to</p> <p>7 the NEC litigation, they arise because they were the NEC</p> <p>8 litigation documents that have been produced in this</p> <p>9 recent production But I will let Mr Merideth speak to</p> <p>10 the specifics of the topic</p> <p>11 SPECIAL MASTER POPPITI: Mr Merideth,</p> <p>12 please</p> <p>13 MR MERIDETH: Yes The issue is a very</p> <p>14 simple one It appears that this document, which we</p> <p>15 view as very important to the issue of prior art and</p> <p>16 with respect to inequitable conduct, was a document in</p> <p>17 LPL's possession, was called for by the requests, was</p> <p>18 not produced until about three weeks ago</p> <p>19 We believe, based upon the fact that it has</p> <p>20 an LPL NEC bates number and that that NEC litigation was</p> <p>21 in 1999 and 2000, being settled at the end of 2000 or</p> <p>22 the beginning of 2001, that that document was produced</p> <p>23 by LPL during that period of time, we want to know why</p> <p>24 it wasn't produced when it was requested initially, why</p>	<p>1 issue they want to explore</p> <p>2 Our position is that whatever happened in</p> <p>3 the NEC case with respect to these documents and how</p> <p>4 they were collected and what trial counsel was involved</p> <p>5 and -- which, I, frankly, don't know the answer to</p> <p>6 that -- but who at LPL was involved, I don't see how</p> <p>7 that's going to advance the ball in this case in any</p> <p>8 direction</p> <p>9 The issue, you know, if they want to make an</p> <p>10 argument that something in that production should have</p> <p>11 been disclosed, for whatever reason, to the Patent</p> <p>12 Office, then I guess they can make that argument But</p> <p>13 to get into issues about which people produced which</p> <p>14 documents in a case that was settled many years ago, I</p> <p>15 think, is getting far afield and would add a layer of</p> <p>16 unnecessary burden to this whole effort</p> <p>17 SPECIAL MASTER POPPITI: Well, let me ask</p> <p>18 this question: Doesn't the -- let me just assume the</p> <p>19 facts or the conclusion that Mr Merideth wants to draw</p> <p>20 with respect to that document, and, that is, and correct</p> <p>21 me, Mr Merideth, if I am wrong, that it is prior art?</p> <p>22 MR MERIDETH: That's correct</p> <p>23 SPECIAL MASTER POPPITI: So, let me assume</p> <p>24 that for the moment</p>

Hearing

22 (Pages 82 to 85)

Page 82	Page 84
<p>1 And knowing, assuming that for the moment, 2 that it was produced at a point in time when the 3 patents-in-suit were being prosecuted, that that's not 4 disputed; correct?</p> <p>5 MR. CHRISTENSON: Your Honor, I don't know 6 if -- I don't know that that's the case. I am not in a 7 position to tell you affirmatively that that's 8 incorrect. I just don't know the answer to that.</p> <p>9 SPECIAL MASTER POPPITI: Well --</p> <p>10 MR. CHRISTENSON: I was not involved in the 11 NEC case and I don't know that there is anything that 12 specifically establishes that one way or the other.</p> <p>13 SPECIAL MASTER POPPITI: Mr. Merideth, I 14 think you told me that the, and I think the papers 15 reflect, that the NEC case was -- you help me. Direct 16 me to the dates that you are referring.</p> <p>17 MR. MERIDETH: Yes, sir. There are two NEC 18 cases that were related. They were commenced either at 19 the end of 1998 or early 1999, and they were settled at 20 the -- in early, or at least the docket shows that the 21 Court was informed that they were settled early in 2001, 22 and they were actually dismissed, if my memory is 23 correct, by sometime in the spring of 2001.</p> <p>24 SPECIAL MASTER POPPITI: All of that,</p>	<p>1 tomorrow, end of day, only assuming that I could report 2 to you before then that we had provided the specifics 3 that have been requested, and, if not, then perhaps we'd 4 have to have it on Monday.</p> <p>5 I really hate to push this out and continue 6 pushing this out because, as Your Honor is aware, the 7 reason that we wanted this deposition and we have been 8 moving to get it so rapidly is because of the August 9 28th pending date for the opening expert report on 10 invalidity.</p> <p>11 I am just not sure what to do in that regard 12 with following up with this.</p> <p>13 SPECIAL MASTER POPPITI: It needs to be done 14 tomorrow. My concern -- let me just look at something, 15 please. I have a hearing that I am preparing for 16 tomorrow at 3:00 in another matter, and I am hoping that 17 that's not going to last more than an hour and a half. 18 I am inclined to say that if I need to be involved at 19 all, it needs to be at 5:00.</p> <p>20 MR. CHRISTENSON: Your Honor, I think we 21 need to, you know, to move this process forward as 22 quickly as possible to try to make sure we are all on 23 the same page with what it is you expect to happen with 24 respect to this deposition.</p>
Page 83	Page 85
<p>1 accepting those dates, all of that falls into the time 2 frame when the patents-in-suit were being prosecuted?</p> <p>3 MR. MERIDETH: That's correct. And that's 4 why we believe that it is important to figure out who, 5 at LPL, had possession of that document in order to 6 produce it in the NEC case, and why, if they thought it 7 to be relevant in the NEC case, they didn't disclose it 8 to the Patent Office?</p> <p>9 SPECIAL MASTER POPPITI: I am satisfied that 10 you have the right to pursue that line to see if you can 11 draw that straight line because it is certainly relevant 12 to the issue of intent and the overarching issue of 13 inequitable conduct, so I am going to permit it to be 14 part of the deposition subtopics, if you will.</p> <p>15 And I understand what it does. It opens up 16 a category of inquiry that is not insignificant.</p> <p>17 Okay. How do you expect that we can close 18 out the DM 37? Is it a matter of reporting back to me 19 with advice that everything is worked out?</p> <p>20 MS. ROMAN: Perhaps, yes, it would be to 21 report back to you. I think that there are the issues 22 that the timing of the deposition and the length of the 23 deposition that remain unresolved and I am not sure how 24 best to handle that unless we could have a call.</p>	<p>1 I also, though, need to, obviously, talk to 2 my client and inform them of today's events, and I will 3 need to coordinate closely with them in terms of what 4 our position is going forward.</p> <p>5 So, I don't know what exactly ViewSonic has 6 in mind in terms of scheduling discussions with 7 ViewSonic and further discussions with you. I am just 8 saying I don't know that tomorrow is the day that we 9 would have been able to have received and discussed 10 fully the, you know, the proposed more specific subject 11 matters.</p> <p>12 SPECIAL MASTER POPPITI: Let me ask this 13 question: Have you talked about dates?</p> <p>14 MS. ROMAN: We have not talked about the 15 dates. ViewSonic put in dates in the most recent 16 correspondence, and, of course, other than to the extent 17 that, in the previous hearing, I have mentioned that it 18 needs to take place as far in advance of the 28th as it 19 could.</p> <p>20 The issue of the -- and we did talk about 21 the length of the deposition during our last meet and 22 confer. I guess I only see that as the only two issues 23 that we would need to follow-up on because, as I 24 understand the directive from today, and I will go back</p>

Hearing

23 (Pages 86 to 89)

Page 86	Page 88
<p>1 through the transcript just to make sure I have got it</p> <p>2 correct, that we have to identify the later products</p> <p>3 that we want to focus in on so that they can prepare on</p> <p>4 those products, and then, with respect to the sales</p> <p>5 information, we need to provide more specifics, and, as</p> <p>6 I understand it, that would include examples such as,</p> <p>7 specifically, what features and what sales information</p> <p>8 and relate it back to those same products that we have</p> <p>9 identified</p> <p>10 SPECIAL MASTER POPPITI: Yes</p> <p>11 MS ROMAN: And I don't know that that would</p> <p>12 require any further discussion because you have</p> <p>13 instructed us to provide the specifics</p> <p>14 SPECIAL MASTER POPPITI: That shouldn't</p> <p>15 require any further discussion</p> <p>16 MS ROMAN: But the length of the deposition</p> <p>17 and the date for the deposition, I think, are the only</p> <p>18 two issues that remain briefed in the parties' letters</p> <p>19 that need to be discussed</p> <p>20 MR CHRISTENSON: Your Honor, if ViewSonic</p> <p>21 comes back and says, you know, We want the same 70</p> <p>22 products that we identified before we started today, we</p> <p>23 really haven't -- nothing has really changed, so I am</p> <p>24 not sure I agree that there won't be any further</p>	<p>1 you are all going to be spending time doing whatever you</p> <p>2 need to do with respect to this case even over the</p> <p>3 weekend</p> <p>4 MS ROMAN: Yes, Your Honor</p> <p>5 SPECIAL MASTER POPPITI: And if that's the</p> <p>6 case, I think it's important for me to say to you, If</p> <p>7 what I am going to be asked to focus on is the date and</p> <p>8 the time and you can't turn to it on Friday and you can</p> <p>9 turn to it on Saturday, it's not going to take 15</p> <p>10 minutes of my time to do that</p> <p>11 MR CHRISTENSON: Your Honor, I don't see</p> <p>12 any reason we could not have a discussion among counsel</p> <p>13 tomorrow And if there is a dispute, I don't see any</p> <p>14 problem with bringing it to your attention tomorrow</p> <p>15 rather than at a future time</p> <p>16 There may be other -- you know, there may be</p> <p>17 facts I don't know when we have the discussion tomorrow</p> <p>18 but that may not make a difference for purposes of</p> <p>19 getting your input</p> <p>20 SPECIAL MASTER POPPITI: I am happy to do</p> <p>21 5:00</p> <p>22 MS ROMAN: That works for ViewSonic, Your</p> <p>23 Honor</p> <p>24 MR CHRISTENSON: That's fine, Your Honor</p>
Page 87	Page 89
<p>1 discussion</p> <p>2 I think it depends on --</p> <p>3 SPECIAL MASTER POPPITI: I think when</p> <p>4 Ms Roman was saying "any further discussion," on the</p> <p>5 topics, the parameters, and things of that nature</p> <p>6 Let me just make an observation about the</p> <p>7 time without getting into a specific number It seems</p> <p>8 to me, by virtue of what you have agreed to today, that</p> <p>9 you have achieved some economy here, at least I hope</p> <p>10 that's the case in terms of the focus of the witness</p> <p>11 when he or she is testifying And I think that's the</p> <p>12 case</p> <p>13 So, I am hoping that you have some</p> <p>14 discussion as early as tomorrow about the date and time</p> <p>15 I really don't think I need to be engaged on any other</p> <p>16 detail</p> <p>17 MR CHRISTENSON: That's fine, Your Honor</p> <p>18 SPECIAL MASTER POPPITI: So, if you are</p> <p>19 telling me it can't possibly be done tomorrow because</p> <p>20 you are not going to be able to confer about date and</p> <p>21 time and have some discussion with your client, I am</p> <p>22 going to have to take you at your word</p> <p>23 At the same time, I am going to anticipate,</p> <p>24 and I don't mean to be -- I am going to anticipate that</p>	<p>1 SPECIAL MASTER POPPITI: And if I am running</p> <p>2 late, I will -- just a moment -- I will let you know</p> <p>3 Now, 5:00 works for everyone?</p> <p>4 MR CHRISTENSON: Yes, Your Honor</p> <p>5 MR MERIDETH: Yes, Your Honor</p> <p>6 SPECIAL MASTER POPPITI: The only other</p> <p>7 issue, and I don't know whether we should make any</p> <p>8 effort to deal with this today, although we have got to</p> <p>9 deal with it soon, is your continuing conversations</p> <p>10 regarding Rudich If I mispronounce it, I apologize</p> <p>11 MR CHRISTENSON: It's actually Rudich. Your</p> <p>12 Honor</p> <p>13 SPECIAL MASTER POPPITI: I got it wrong</p> <p>14 The court reporter got it right</p> <p>15 MR MERIDETH: Your Honor, we have made a</p> <p>16 proposal to LPL that would not require the production of</p> <p>17 any of the privilege log documents and which would limit</p> <p>18 Miss Rudich's testimony to the one '079 application</p> <p>19 SPECIAL MASTER POPPITI: Right</p> <p>20 MR MERIDETH: However, the condition to</p> <p>21 that is that, if it's necessary, based upon whatever</p> <p>22 discussion is had with the 30(b)(6) witness for LPL, and</p> <p>23 I believe that this will be required, we wish to take</p> <p>24 the deposition of a person who is knowledgeable at</p>

Hearing

24 (Pages 90 to 93)

Page 90	Page 92
<p>1 McKenna concerning the subject of the disclosures made 2 to the Patent Office and the discussions concerning 3 other rear mountable products We think that's 4 reasonable</p> <p>5 Frankly, we were led to believe, by the 6 Rudich declaration, that she had that knowledge She 7 didn't indicate, in her declaration, that she had only 8 limited -- that she had only limited authority and was 9 an associate She submitted the declaration in 10 connection with the patents-in-suit, and we assumed, I 11 believe reasonably, that she was talking about her 12 participation in the process during the relevant time 13 period of the application, not just very recently</p> <p>14 That would eliminate any need to go through 15 the privileged materials and it could be a very narrow 16 further deposition as the person most knowledgeable 17 related to the issues that are kind of keyed up by the 18 deposition of the LPL 30(b)(6) witness</p> <p>19 SPECIAL MASTER POPPITI: Let me see if I 20 understand what you are saying, and I did see that 21 proposal and you did attach some documents to it and I 22 know that LPL hasn't had a chance to -- or hasn't filed 23 anything with me in terms of response to what you have 24 advised</p>	<p>1 MR CHRISTENSON: Your Honor, I think we 2 have really got two separate issues on the table here 3 One set of issues relates to Miss Rudich's deposition, 4 which we, obviously, already discussed with Your Honor</p> <p>5 SPECIAL MASTER POPPITI: Yes</p> <p>6 MR CHRISTENSON: The idea of taking a 7 30(b)(6) deposition of this law firm, McKenna, Long & 8 Aldridge, really was suggested to us for the first time 9 in a letter that I received on August 14th There has 10 been no discussion among counsel on that issue</p> <p>11 SPECIAL MASTER POPPITI: Then let's hold it 12 Let's have the discussion, please -- I understand that 13 the backdrop may very well be the information that's 14 gathered as a result of the 30(b)(6) witness that we 15 have been talking about for the past hour or so, frame 16 the issue, and I will deal with it as quickly as it is 17 important to deal with it But it's something that I 18 shouldn't be dealing with today</p> <p>19 MR CHRISTENSON: The only other thing, 20 then, Your Honor, is I think there was, at one point, a 21 request by Tatung for us to submit to Your Honor for in 22 camera review certain documents on our privilege log</p> <p>23 SPECIAL MASTER POPPITI: That should be -- 24 MR CHRISTENSON: As I understood it, Tatung</p>
Page 91	Page 93
<p>1 I mean, I understand everyone wants to 2 finish -- we should have finished it a long time ago -- 3 issues involving discovery, but I think what I am 4 hearing is it really depends on what happens with the 5 30(b)(6) witness in terms of whether or not there is a 6 need for someone else to be designated as a 30(b)(6) 7 witness; correct?</p> <p>8 MS HO: Your Honor --</p> <p>9 MR MERIDETH: It may I think the answer 10 is it may</p> <p>11 SPECIAL MASTER POPPITI: It may</p> <p>12 MR MERIDETH: For example, it could be that 13 the 30(b)(6) witness would say, in response to 14 questions, We were aware of the Lucky Gold Star product 15 for whatever reason, we did not disclose it to anybody 16 who was involved at McKenna or any of its predecessor 17 firms with regard to the prosecution of this patent or 18 anything else, in which event it wouldn't be necessary 19 to ask anybody at McKenna other than to ask, Well, what 20 were the procedures in place that ferret out this 21 information and was any effort made in that regard?</p> <p>22 If the testimony is, Yes, we were aware of 23 this product, and, Yes, we did communicate it to our 24 lawyers, then there is a different inquiry to be made.</p>	<p>1 was going to submit a form of order specifying the 2 documents to be submitted, but I don't think that's been 3 done yet and I don't know if that's still something that 4 Tatung is interested in pursuing</p> <p>5 SPECIAL MASTER POPPITI: I think what I hear 6 is Mr Merideth is saying, for the purpose of seeing if 7 we can't forge some agreement here, and that may be an 8 agreement that has to await the conclusion of the 9 30(b)(6) deposition, that should be forestalled; I think 10 I am hearing that, Mr Merideth?</p> <p>11 MR MERIDETH: Well, that's part of it, Your 12 Honor I think the other part of it is: Up until our 13 discussion on Monday, I was not aware of the information 14 related by Ms Brzezynski that, during the time periods 15 when this patent was being prosecuted, Ms Rudich was 16 only an associate That certainly was not clear, in my 17 view, from her declaration</p> <p>18 SPECIAL MASTER POPPITI: I think, for my 19 comments, I understood the declaration to be as you 20 understood it I didn't understand, until we had our 21 last teleconference, that her role was not as -- her 22 role was not -- I didn't come away from her -- I came 23 away from the declaration with a different understanding 24 of her role</p>

Hearing

25 (Pages 94 to 96)

Page 94	Page 96
<p>1 MR CHRISTENSON: Your Honor --</p> <p>2 MR MERIDETH: My response to that was our</p> <p>3 letter, which, basically, says, to put it in a nutshell,</p> <p>4 If she is not the person who has the information, then</p> <p>5 let's not produce all the confidential documents and go</p> <p>6 through that effort. Let's find the person who is the</p> <p>7 relevant individual. Let's limit the subjects that are</p> <p>8 going that are to be asked of that individual. We know</p> <p>9 that it's a sensitive area that relates to the issues of</p> <p>10 privilege. We ought to approach it with a scalpel</p> <p>11 instead of a meat axe.</p> <p>12 But it's apparent from Miss Brzezynski's</p> <p>13 comments that our conception, my conception that</p> <p>14 Miss Rudich is the appropriate person was not correct.</p> <p>15 So, I am saying, Okay, if she is not</p> <p>16 correct, why are we going to go through the requirement</p> <p>17 that confidential documents be produced and that you</p> <p>18 review them in camera to what end? It seems to me that</p> <p>19 we need to address that issue.</p> <p>20 SPECIAL MASTER POPPITI: I misspoke when I</p> <p>21 said "forestalled." I do understand what you are</p> <p>22 saying. I think what I am hearing is there needs to be</p> <p>23 additional conversation in terms of who, if anyone, I</p> <p>24 want you to have that conversation. I want to be</p>	<p>1 CERTIFICATE</p> <p>2 STATE OF DELAWARE:</p> <p>3</p> <p>4 NEW CASTLE COUNTY:</p> <p>5 I, Renee A. Meyers, a Registered Professional</p> <p>6 Reporter, within and for the County and State aforesaid,</p> <p>7 do hereby certify that the foregoing teleconference was</p> <p>8 taken before me, pursuant to notice, at the time and</p> <p>9 place indicated; that the teleconference was correctly</p> <p>10 recorded in machine shorthand by me and thereafter</p> <p>11 transcribed under my supervision with computer-aided</p> <p>12 transcription; that the foregoing teleconference is a</p> <p>13 true record; and that I am neither of counsel nor kin to</p> <p>14 any party in said action, nor interested in the outcome</p> <p>15 thereof.</p> <p>16 WITNESS my hand this 17th day of August A.D.</p> <p>17 2007.</p> <p>18</p> <p>19 _____</p> <p>20 RENEE A. MEYERS</p> <p>21 REGISTERED PROFESSIONAL REPORTER</p> <p>22 CERTIFICATION NO. 106-RPR</p> <p>23 (Expires January 31, 2008)</p> <p>24</p>
Page 95	
<p>1 informed about it. I am not going to give you a</p> <p>2 deadline today. I want you to tell me whether you have</p> <p>3 either reached some understanding about an additional</p> <p>4 30(b)(6) on the issue that's just been discussed, and if</p> <p>5 you can't resolve it, it's not going to take more than</p> <p>6 15 minutes for me to resolve it for you.</p> <p>7 MR CHRISTENSON: Very well, Your Honor.</p> <p>8 MR MERIDETH: That's fine with me, Your</p> <p>9 Honor.</p> <p>10 SPECIAL MASTER POPPITI: Okay. Is there</p> <p>11 anything else, or should we wait for 6:00?</p> <p>12 MR CHRISTENSON: I think we should wind up.</p> <p>13 Your Honor.</p> <p>14 SPECIAL MASTER POPPITI: I think we should</p> <p>15 wrap it up.</p> <p>16 MS ROMAN: I agree, Your Honor.</p> <p>17 SPECIAL MASTER POPPITI: Thank you all very</p> <p>18 much.</p> <p>19 (The hearing was concluded at 5:55 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	